司法倫理（外國篇）

JUDICIAL ETHICS

—foreign cases

所謂倫理，就是一種謙遜真誠的精神，對人、對事、對內、對外嚴守分際，約束自己，有所不為，有所不取。

An ethical judiciary should be a person of principle, who acts with decorum and is humble and sincere.

法務部司法官學院 編印

Compiled by Academy for the Judiciary, Ministry of Justice

目 次

外國篇

正己　才能正人

法律是規範人民行為的準則，司法則是伸張正義維持社會秩序的力量。司法官每個決定都與民眾權益息息相關，會影響社會大眾的價值觀念，引領人們的行為舉止，甚至左右國家社會的未來發展。所以堅持人權之保障及公平正義之實現，本於良知做出明智的判斷，為人民指出正確的方向，是司法官無可迴避的重責大任。

為達成以上使命，司法官除了具有法律專業職能外，更應廉潔自持，重視榮譽，舉止端莊，交遊謹慎，謹守分際，有所不為，有所不取，生活清簡，不受物質迷惑，隨時反省惕勵，才能培養高尚的品操，贏得民眾的信任，提昇人民對於司法之信賴。

本部司法官學院肩負培育司法官之任務，在林前院長輝煌指導下，於民國92年輯成「司法倫理資料彙編」一書供作學員教材。95年間增補內容，更名為「司法倫理」，101年再度充實內容改版，資料更加豐富。現任蔡院長清祥指示再蒐集添增文獻資料，編為本國篇及外國篇等上、下2冊，方便學員研讀收藏，也供法官、檢察官及其他司法人員做為執行職務行為準則之重要參考。

值此新輯付梓，期盼所有司法官學員，無論投入司法工作多久，切記莫忘初衷。只要保持熱情及勇氣，堅持不懈，必能從中學習成長，獲得成就，同時由挑戰中領略樂趣。期待大家在司法領域中不斷精進，成為司法機關之中流砥柱。

法務部部長　羅瑩雪 謹識

中華民國104年7月2日

Those who can command themselves command others.

Law is to govern people's behavior while judicatory is the authorities to uphold justice and maintain social order. Every decision a judiciary make has an impact on the rights of parties involved, influences morale ethics of the public, guides people's behaviors or even sways the future of the country. Therefore, it is the judiciary's mandatory responsibilities to protect human rights, achieve justice, make conscientious decisions and indicate people the correct direction.

To achieve these missions, the judiciary, apart from maintaining professional competence, should contain oneself, uphold integrity, act solemnly, avoid impropriety, choose friends wisely, observe standards, lead a simple life, and introspect oneself constantly to have decent characters and promotes public confidence in the judiciary system.

The Academy for the Judiciary, Ministry of Justice is in charge of nurturing judiciaries. In 2003, under the supervision of the then president, Dr. Lin Huei-huang, "Compilation of Judicial Ethics Cases" was published as trainees' reference. In 2006, with replenished content, the book was renamed as "Judicial Ethics" and the 2012 edition was further expanded. Now, under the instruction of current President Tsai Ching-hsiang, more literature and cases have been added and the book

is divided into 2 volumes: domestic and foreign cases. It is a useful reference to the code of conduct for not only trainees but also serving judges, prosecutors and other legal personnel.

Hope all the trainees never forget their original intentions to join the profession. With passion, courage and persistence, one may develop a sense of accomplishment and enjoy challenges encountered. I anticipate all the trainees to keep advancing themselves and become the mainstay in judicial field.

Minister of Ministry of Justice
Luo Ying-shay
July 2, 2015

1 聯合國檢察官角色之指引

一、聯合國檢察官角色之指引

第八屆聯合國預防犯罪和罪犯待遇大會
1990年8月27日至9月7日 哈瓦那

基於聯合國憲章規定，各國人民確堅信，其本國應建立一個完備制度，以維護正義，並鼓勵國際合作，促進人權及基本自由之尊重，不因種族、性別、語言或宗教之不同受差別待遇為宗旨。

基於世界人權宣言，慎重宣示法律面前人人平等原則、無罪推定原則及有權得到獨立超然之司法機關公正及公開審判原則。

基於目前在這些原則基本願景及實際情況間仍有差距。

基於各國應該依照該原則精神去組織及展開司法工作，努力使該原則完全成為現實。

基於檢察官在司法工作中具有決定性作用，有關執行其重要職務之規則應促進其尊重，並依照前述原則行事，以助於刑事司法公平而合理，以有效保護公民免受犯罪行為之侵害。

基於透過改進檢察官徵聘方式，及其法律與專業培訓，並向其提供一切必要手段，使其在打擊犯罪行為，特別是打擊新形式及新規模犯罪行為方面得以克盡職守，確保檢察官具備執行其職務所需之專業資歷具有十分重要之意義。

基於聯合國大會依據第五屆聯合國預防犯罪及罪犯待遇大會之建議，於1979年12月17日第34/169號決議中通過執法人員行為守則。

基於第六屆聯合國預防犯罪及罪犯待遇大會在第16號決議中要求犯罪預防及控制委員會將制定有關法官獨立及有關法官及檢察官甄選、專業培訓及地位之指導方針，列為工作重點。

基於第七屆聯合國預防犯罪及罪犯待遇大會，通過關於司法機關獨立性基本原則，隨後又由聯合國大會於1985 年11月29日以第40/32號及1985年12月13日以第40/146號決議加以批准。

基於為罪行及濫用權力行為受害者取得公理基本原則宣言建議於國際及國家二方面採取措施，使犯罪行為受害者能更好地獲得正義與公平待遇、回償原物、賠償及援助。

基於第七屆聯合國預防犯罪大會於其第7號決議中要求犯罪預防及控制委員會考慮是否需要制訂有關以下各方面準則：檢察官之甄選、專業培訓及地位，對檢察官職責行為之要求，使檢察官對刑事司法制度之順利運作為更大貢獻，並增進檢察官與警方合作之手段，檢察官裁量權範圍，及檢察官在刑事訴訟程序中之角色，並就此向今後各屆聯合國預防犯罪大會提出報告。

下列各項指引之制訂，目的在於協助會員國確保及促進檢察官在刑事訴訟程序中能發揮有效、公平及公正無私之角色，各國政府於其國內立法及實踐中應尊重並考慮到該指引規定，同時另應使檢察官、法官、律師、行政及立法部門之人員及一般公眾注意到本指引。本指引制定時主要係以公訴檢察官為考量對象，但其同樣可視情適用於特別任命之檢察官。

資格、甄選及培訓

1. 檢察官之派任，須從才德兼備，曾受訓練，考評合格者遴選之。
2. 各國政府應確保：
   (a) 檢察官之遴選不得有偏頗派任情事，亦不得基於種族、膚色、性別、語言、宗教、政治或其他言論、社群、人種、財富、出身、經濟或其他身分等因素考量而為遴選差別待遇。
   (b) 檢察官須受專業教育及訓練，使懷有檢察官職務之理想及道德責任，熟稔犯罪嫌疑人及被害人受憲法及實定法相關規定，及內國法及國際法所保障之人權及基本自由。

職務身分及工作條件

3. 檢察官定位為司法不可或缺之官員，應牢記自己職務身分，隨時維護其職務之榮譽及尊嚴。
4. 檢察官執行職務，不得有恐嚇、妨礙、騷擾、不當介入或以莫須有之民、刑事及其他法律責任作威脅等行為。
5. 檢察官如因執行職務而致其自己及家人受到人身安全威脅者，有關當局應給與特別保護。
6. 營造適宜之檢察官工作條件，給予合理薪俸及退養金、法定任期保障及退休年齡規定。
7. 有關檢察官之升遷，應法制化，設各種客觀評量標準，特別是其專業資歷、能力、品行及經驗為依據，並依照公平及公正程序決定。

言論及結社自由

8. 檢察官與一般公民同，皆享有言論、信仰、集會及結社之自由，但身為檢察官，尤應著力於有關法律、司法、人權保障與促進等事項之公開討論。檢察官有權加入或自組地方性、全國性或國際性組織及會議，不會因其成立或參加這些合法組織或會議而遭受職業上之不利益。但檢察官行使上開言論及結社權時，仍應隨時注意恪遵法律及公認之檢察官職務倫理規範。
9. 檢察官為維護其自身利益，提升其專業訓練及保障其身分得組成協會與組織，以促進其專業培訓及保障其地位。

在刑事訴訟中之角色

10. 檢察機關與審判機關應嚴格分隸分離。
11. 檢察官在刑事程序中應扮演積極角色，職司公訴之提起，並依其本國法制之規定，實施犯罪之偵查、偵查作為合法性之監督、法院判決之執行，及代表公益行使其他法定職權。
12. 檢察官應以迅速且公平地依法行事，尊重及保護人類尊嚴，維護人權，並有助於確保法律訴訟程序於刑事司法系統的職務順利地運行。
13. 檢察官執行職務應確實遵循：
    (a) 公正執行職務，避免一切政治、社會、宗教、種族、文化、性別，或其他形式之歧視；
    (b) 以保障公益為念，客觀行事，對被告及被害人之地位號應注意維護，對被告有利、不利之相關情，亦

應一律注意。；

(c) 除為執行務或維護公平公正之必要者外，檢察官對其所有之事務，應嚴守秘密。

(d) 考量被害人之觀點，關切其個人利益所受損害，確實依照聯合國所頒布之「犯罪及濫權被害人保護基本原則宣言」，告知被害人得享有之一切權利。

14. 檢察官發覺偵查有所偏頗，犯罪缺乏證據支持時，不應輕率啟動或繼續追訴，而應盡力使審判程序停止。

15. 檢察官依其內國法規之授權，得偵辦公務員犯罪者，對於公務員之貪瀆，濫權、重大侵害人權及其他國際法公認之罪行等犯罪，尤應努力偵辦。

16. 檢察官明知或可得而知其不利於被告之證據係以不正方法取得者，此種不正方法，特別是用嚴刑逼供，不合人道或貶抑人性之處遇，或其他踐踏人權等，已構成對被告人權之重大違犯者，除非用為訴追施用此不正方法取得證據者之責任外，檢察官應拒絕使用這些不法證據起訴被告，或告知法院這些證據不法性；且應採取一切必要步驟，依法將因為用此不正之方法取得證據而負責之人，繩之以法。

裁量權之行使

17. 法規如定賦予檢察官裁量權時，該法規對於檢察官是否發動訴追之決定過程，包括起訴或不起訴之決定，應訂定法則，提供檢察官明確指引，以強化其決定方法之公平性及一致性。

起訴之替代方案

18. 檢察官基於尊重被告及被害人之權益，應依法慎重考量放棄追訴、附條件或無條件暫緩追訴、或將刑事案件轉向，使脫離正式的刑事司法系統。為達此目的，各會員國應竭力評估採行「起訴轉向」制度之可能性，以利減輕法院過重的案件負荷，並避免因審前羈押、起訴、判刑所造成之烙印，及執行徒刑所可能引發之許多不良後遺症。
19. 檢察官對少年犯罪案件之追訴與否，依其內國法如擁有裁量權者，其裁量應特別審慎考量該犯罪之罪質及其嚴重性、維護社會安全，及該少年犯之性格、生長背景等因素。如其內國法定有處理少年事件之特別法律或程序者，檢察官尤應注意斟酌適用該特別法之起訴替代規定。檢察官應盡其所能，僅於有絕對必要之情形時，始對少年犯起訴。

與其他政府機關或機構之關係

20. 為確保起訴之公正與有效，檢察官應竭力與警察、法院、法律專業人員、公設辯護人及其他政府或機構合作。

懲戒程序

21. 檢察官應受懲處之行為應以法規明定。對檢察官有逾越專業行為準則之行為提出舉發時，應依適當程序，迅速、公正處理。檢察官有權申辯。對檢察官懲處之決定，應設審查之救濟方法。

22. 依懲戒程序所作之檢察官懲處決定，應力求客觀並引據專業行為規範、公認的倫理、守則，以及本指引所示。

指引之遵守

23. 檢察官應嚴格遵行本指引。竭盡所能，預防與本指引之規範有正面違逆情事。
24. 檢察官知悉有違逆或可能違逆本指引所提示各項規範之情事，應即時陳報其上級機關，或其他負有督導本指引執行之權責機關處理。

Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia , their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion, Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal, Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation, Whereas the organization and administration of justice in every country should be inspired by those.

principles, and efforts undertaken to translate them fully into reality, Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime, Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms

and dimensions, Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors, Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime, Whereas , in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia , to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses, The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings,

should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
   (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
   (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.
5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall

always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
13. In the performance of their duties, prosecutors shall:
    (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;
    (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
    (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

(d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.
19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of

professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.
24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

2 美國司法人員倫理規範

二、美國司法人員倫理規範

（一）美國法官行為守則

序言

本守則適用於下列法官：巡迴上訴法院法官，地方法院法官，國貿法庭法官，破產程序法官，治安法庭法官。此外，稅務法庭、退伍軍人法庭、軍事上訴法庭皆適用本守則。適用本守則之法官須在上任後一年內儘速合理地安排調整個人事務，以符合本守則之規定。

當本守則所適用之法官對守則內容有疑義請求解釋時，司法會議授權其所屬法官守則審議委員會對於守則之解釋適用提出意見。對於守則請求解釋，或提出其他關於守則適用上之疑義時，須對法官守則審議委員會主席為之。

行為守則審議委員會主席
轉交總顧問
美國法院行政辦公室
瑟古德．馬歇爾聯邦司法大廈
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程序問題請洽
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第1則：法官需維護司法獨立與純潔

一個獨立且受尊敬的司法體系是社會所不可或缺的。法官必須共同建立、維持、執行本守則所訂定之高道德標準，並且身體力行之。如此，司法獨立與純潔才能被維護。本守則之條文皆是為了達此目的（司法獨立與純潔）而設。

註釋

社會大眾對於法官以及法院判決之尊重，取決於司法之獨立與純潔。唯有法官在執行職務時不受個人好惡左右、且不受外在影響時，司法才有獨立與純潔可言。雖然法官必須獨立，但他們仍須遵守法律與法官守則。人民對司法公正客觀之信心，繫於每位法官對於法律與法官守則之遵守。相對地，若法官違反本守則，將會減低社會對司法的信心並傷害整體國家法治。

本守則所規定事項均為理性法則。它們必須符合憲法、法律、以及其他各種相關情況。解釋本守則時，不得損及法官在做個案判斷時之獨立性。本守則提供法官以及其他司法公職之被提名人一個行為準則。本守則亦提供行為準則給法官懲戒程序做參考（該程序依照「1980年司法

改革與法官行為及失職法」進行），不過本守則並不建議對每個違反守則規定的行為都予以處罰。是否施予懲戒，及懲戒之程度，應取決於守則之合理適用以及具體事實，例如違反之程度、意圖、頻率、對其他法官以及司法體系之影響。本守則中許多禁止規定都以不確定法律概念為之，當一個理智的法官無法確定他的行為是否被禁止時，該行為就不應受到懲戒。此外，本守則並非用以作為民事求償或刑事追訴之工具。最後，若律師在訴訟程序中利用本守則作為訴訟策略，本守則之原有意義將遭到顛覆。

第2則：法官在各種場合都應避免不當行為

A. 法官應尊重並遵守法律，行為時應時時使公眾相信司法的公正與純潔。
B. 法官不可因家庭或私人關係影響自己的判斷或行為。法官不可藉司法上的權力追尋自己或其他人的利益，亦不可使他人感受到自己有特殊地位可以影響法官。法官不可自願成為他人的人格證人。
C. 法官不可參加有歧視性別、種族、宗教、國籍的團體。

註釋

第2則A. 在知悉所有經由適當調查而發現的相關情況後，一般人會合理認為擔任法官的誠實、廉潔、無私或適當性已受損時，即屬不當行為。公眾對司法的信任會因為法官不負責或不適合的行為而受侵蝕。法官必須避免所有不當行為及不當行為之外觀。法官應持續受公眾檢驗並心

甘情願地接受平常人可能會認為繁重的限制。因為無法列舉所有禁止行為，所以必須以一般性的用語來描述，且適用於本守則未規定的法官的有害行為。

第2則B. 以性格證人所為之證詞是將司法機關之威望繫於法官作證之程序而且可能會被視為官方的證詞。法官應該勸阻當事人要求法官擔任性格證人，除非基於正義之要求的特殊情況。本條並非創設拒絕證言權。

法官必須避免司法權成為自己或他人追求自我利益的工具。例如，法官不可利用自己的地位去影響親友的訴訟。法官出版自己的著作時，需保留廣告的權利，以免他人藉由廣告利用司法遂行私人利益。

法官必須留意可能的權力濫用。法官不可主動提供資料給量刑法官、保釋官、觀護人。但若上述之人經正式程序提出請求者，不在此限。法官得參與法官遴選程序，與提名機關合作，篩選可能之法官人選、提出對該人選之意見。

第2則C. 若法官加入一個有歧視他人傾向的團體，法官的公正性會受到質疑。一個團體是否帶有歧視性，其實判斷不易，但法官必須對此十分敏感。為判斷時，不能只檢視該團體現有會員的名冊上有哪些成員，而是應該檢視該團體如何選取成員，是否基於宗教、種族、文化取向上的判斷，或者成員的選取只是出於私人情誼而無違反憲法上禁止歧視之虞。其他應考量的因素尚包括：該團體的大小、本質、位處地點之居民的多樣性（哪些人可能會成為潛在的會員）。因此僅有缺乏多樣性的會員這個事實，並不會立即構成歧視，除非一個理性之人在類似情況下亦會

認為若非團體帶有歧視性，其會員應該具有多樣性。除了上述情況，若一個團體武斷地以種族、宗教、性別、國籍來排除一個本來有資格加入之人，該團體即具有歧視性。

雖然第2則C文義上僅限於團體以種族、宗教、性別、國籍來歧視，法官加入一個因歧視而違反第2則、第2則A的團體也是被認為不當的。此外，若法官加入一個以種族、宗教、性別、國籍歧視他人的俱樂部，或在該俱樂部進行會議，也是違反第2則和第2則A。另外，若使得大眾認知到法官加入或認許那些有歧視性的團體，會損害社會對司法公平、無私的信心，也會違反第2則及第2則A。

當一個法官認為他所參加的團體具有歧視性而為第2則、第2則A、第2則C所禁止時，法官應立即設法使該團體停止該歧視行為。若該團體無法立即停止歧視行為，法官應在2年內退出之。

第3則：法官應公正勤勉執行職務

法官之職務優先於其他活動。執行法定職務時，應遵守下列標準：

A. 審判職務

(1) 法官應盡忠職守，並保持法學上之專業能力，不為黨派的利益、公眾的喝彩或批評的顧慮而有所動搖。

(2) 除有迴避情事，法官應審理所分派之案件，並於程序中維持法庭的秩序及禮儀。

(3) 法官應有耐心、威嚴、禮貌，並懇切地對待當事人、陪審員、證人、律師、及其他訴訟關係人。並應要求受法官監督之人，包括律師，於符合彼等在訴訟中所扮演角色之程度內，為相同之行為。

(4) 法官應給予與訴訟程序有法律利害關係之每一個人或其律師，依法充分陳述之權；除法律另有規定者外，不應對審理中或即將審理之訴訟，率先開始或考慮與一造討論案情內容或對案情內容有影響的程序。法官得聽取對案件所適用之法律學有專精之公正中立專家之意見，但法官須就所諮詢之人與所得意見之內容通知兩造當事人，並給與兩造當事人有合理回應的機會。法官為調解或和解審理中之案件，經兩造當事人之同意，得分別與兩造當事人及其律師協商。

(5) 法官應迅速處理法院事務。

(6) 法官應避免公開評論審理中或即將審理之訴訟案情內容，法院內受該法官指揮監督之人員亦同。本禁止規定不及於法官職務上所為之公開陳述、法庭程序之解說、或為法律教學目的而為之學術論述。

B. 行政職責

(1) 法官應勤奮的執行行政職責，在執行司法時保持專業能力，並協助其他法官與法院人員履行行政職責。

(2) 法官應要求法院官員、職員及受法官指揮監督之其他人，亦遵守法官所適用之相同忠誠與勤勉準則。

(3) 法官應公平且不只以績效來行使任命權，避免不必要的任命、偏袒或循私。法官不應在受任命者所服勞務之公平價值之外核給報酬。

(4) 法官不得為非必要之任命：行使任命權時應僅基於對方之才能，避免偏袒及循私。法官不得於超過受任命者所服勞務之公平價值外，另核給其報酬。

(5) 法官對其他法官有監督權者，應採取合理之措施以確保彼等適時且有效地執行職務。

C. 迴避

(1) 法官如有使人合理地認為其審理案件有偏頗之虞之情形者，應自行迴避，其情形包括但不限於下列情況：

(a) 法官對當事人有私人成見或偏見，或自己對於案件內有爭執之事證知悉者。

(b) 法官曾為該案件之律師，或法官曾與該案件之律師合開事務所執行律師業務，或法官或該律師曾為該案件之主要證人者。

(c) 法官或法官因擔任受託人而知悉法官本身或其配偶或其同住之未成年子女，對該案件或當事人有財產上利益者，或享有受案件之結果有相當影響之利益者。

(d) 法官或其配偶，或其二人之三等親內之親屬，或該親屬之配偶，有下列情形之一者：

(i) 為該案件之當事人或當事人之幹事、董事或理事者。

(ii) 為該案件之律師者。

(iii) 對案件之結果享有相當影響之利益而為法官所知者。

(iv) 可能成為該案件之重要證人而為法官所知者。

(e) 法官於政府機關任職時，曾以該身分，為有關該案件之律師、顧問、或重要證人，或曾就該案件之案情內容表示意見者。

(2) 法官應持續瞭解其個人及受託人之財產上利益，並應盡合理之所能，知悉其配偶及與其同住之未成年子女之財產上利益。

(3) 適用本則規定時：

(a) 親等係依民法規定計算之。三等親內之親屬包括：父母，子女，祖父母，孫子女，曾祖父母，曾孫子女，姐妹，兄弟，伯、叔、姑、舅、姨母，伯、叔、姑、舅、姨丈，姪子、外甥及姪女、外甥女，上述的親屬包括全血親、半血親及大部分前婚姻親等。

(b)「受託人」包括諸如遺囑執行人、遺產管理人、信託財產之受託人、監護人等關係者。

(c)「財產上利害關係」或「財產上利益」指擁有法律上或衡平法上利益（無論如何微小均屬

之），或具有為當事人之理事、顧問或其他積極參與其事務者之關係，但下列情形，不在此限：

(i) 擁有相互或共同投資基金之有價證券者，除非法官參與該基金之管理，否則持有該有價證券非屬此之「財產上利益」。

(ii) 在教育、宗教、慈善、互助或民間組織內任職者，對該組織所擁有之有價證券，認無「財產上利益」。

(iii) 相互保險公司之保險單持有人或相互儲蓄社團之存款人之正當權益，或類此之正當權益，僅於案件結果對該權益之價值有相當影響時，始認為對該組織有「財產上利害關係」。

(iv) 擁有政府債券者，僅於案件之結果對該債券之價值有相當影響時，對該債券之發行者，始認有「財產上利害關係」。

(d)「案件」包括預審、審判、上訴審或其他訴訟階段之案件。

(4) 本規則前開規定雖規範案件承辦法官於投入相當時間於該案件後，始知悉其本身或因擔任受託人或其配偶或與其同住之未成年子女，對當事人如有財產上利益（包括該案件之結果而受相當影響利益者），應迴避審理該案件，惟若該法官、配偶或未成年子女，已自行放棄該致使迴避之利益者，則法官無庸迴避。

D. 迴避之免除

法官依第3則C(1)之規定應迴避者，除有(a)至(e)各款所明定之情形，得於筆錄內載明迴避之原因，而不退出訴訟程序外，在揭露迴避原因後，如兩造當事人及其律師於法官不在場時協商之結果，均同意法官無庸迴避，並以書面或在筆錄內載明，且為法官所願意者，則法官仍得審理該案件。該同意文書並應併入該案卷內。

註釋

第3則A (3). 公正且有耐性地審理訴訟案件與快速處理法院事務的職務二者並非不一致，法院可以在達成效率目標的同時，也表現出耐性與慎重。

依據第2則所賦予的職務，所有法官的活動都要促進公眾對司法廉潔與公正的信心，包括履行法官裁判上與職務上職責。保持尊重的職責包括避免會被合理解釋為騷擾、偏見或成見的評論或行為。

第3則A (4). 對訴訟案件禁止傳播資訊之規定，是適用於包括律師、法學院教授及其他並未參與此訴訟程序之人士，法官得向其他法官諮詢或是與那些在法庭上協助法官執行司法職責的相關人員溝通案件。法官應盡力確保法院辦事員或其他人員不會違背此項規定。

法官應鼓勵並尋求促進和解，但是不得使當事人覺得被法庭逼迫放棄權利來解決爭議。

第3則A (5). 為迅速有效而公正處理事務，法官必須重視當事人的依法聽審權，且使爭議之解決，不會有無謂的成本浪費或遲延發生。法官應監督及指揮訴訟案件，以降

低、排除案件程序遲延及增加無謂成本的情形產生。

為迅速處理法院事務，法官必須貢獻足夠的時間於司法職務，準時開庭，迅速決定案件是否提付仲裁，並應要求法庭公務人員，訴訟當事人及其律師與法官協同合作，直至案件審理結束。

第3則A (6). 對公眾針對審理中或尚未審理之案情內容進行評論，應持續採取告誡行動，直到完成上訴程序。如果公眾評論牽涉到法官法庭之個案，要特別小心這些評論未破壞公眾對司法制度公正無私之信心，以致違反第2則A之規定。惟此規定並未禁制法官本人即為當事人之訴訟案件所為之評論，但是當法官本人就是訴訟當事人時，法官不應做出超越判決記錄以外的評論。但法官可依聯邦上訴程序規則第21(b)之規定予以回應。

「法庭人員」並未包括在法官前參與訴訟案件的律師。律師的行為另受適用於各司法權的專業行為規則所規範。

第3則B (3). 受法官任命的公務員，包括仲裁人、委員、專家、破產管理人、監護人、事務員、秘書及法警等。被任命者對於法官所為之任命或報酬授與之同意，並未減輕本款對法官要求之責任。

第3則B (5). 適當的做法可包括直接與法官或律師連繫，若是其他的直接做法，向適當機關報告其行為，或當法官相信法官或律師的行為是由毒品、酒精或醫療情形所引起，予以秘密轉診至協助計畫。適當的做法也可包括被傳喚作證時予以回應或參與司法或律師懲戒程序；法官對懲戒機關應坦白且誠實。

第3則3C. 法官對其配偶之迴避理由也適用於法官共組家庭且有親密關係之人。

第3則3C (1)(c). 在刑事程序，有賠償請求權之被害人並非本守則所稱的程序當事人或系爭案件的主體。法官對於犯罪被害人有財產利益者不須依第3則3C(1)而迴避該刑事程序，但若法官公正性可能被依第3則3C(1)而合理質疑或若該法官之利益會實質地受第3則C(1)(d)(iii)程序結果之影響。

第3則C (1)(d)(ii). 隸屬於律師事務所之案件律師，而該律師又是法官親屬之事實，並不會因此即讓該法官必須迴避。在某些相當情況下，依據第3則C(1)，法官之公正性可能會被合理懷疑，或者律師為法官之親屬，法官被知悉與該律師事務所享有可能會因案件審判結果受相當影響之利益之事實存在時，依據第3則C(1)(d)(iii)，該法官將被要求迴避。

第4則：法官得從事與其司法職位之義務相符之業餘活動

法官得從事業餘活動，包括法律相關事務及公民的、慈善的、教育的、宗教的、社交的、財務的、信託的、與政府的活動，亦可對法律及非法律主題從事演說、寫作、講課及教學。然而，法官不應從事會減損司法職位、干擾法官職責、影響法官公正性、導致頻繁的迴避、或違反下列限制之活動。

A. 法律相關活動

(1) 演說、寫作與教學。法官可以演說、寫作、講課及教學並參與其他與法律、法律制度及司法執行有關的活動。

(2) 諮詢。法官得諮詢或出席行政或立法機關或官員舉辦的公開聽證會：

(a) 關於法律、法律制度或司法執行之事項；

(b) 一般而言在法官的司法經驗於該領域可提供特別專業的範圍內；

(c) 法官代表自己參與與其自己或與其利益有關之事項。

(3) 組織。法官得參加關切法律、法律制度或司法執行之非營利組織或擔任會員、官員、董事、受託人或非法律的顧問，亦可協助該組織之經營與基金之投資。法官可以對公立與私立基金給與機構就關於法律、法律制度及司法執行之企劃與計畫提供建議。

(4) 仲裁與調解。除非法律明確授權，法官不應擔任仲裁人或調解人或其他在法官司法職位之外的司法功能。

(5) 執業。法官不應執業且不應擔任其家庭成員之律師。但法官可以代表自己而無償的為其家庭成員提供法律建議並撰寫或審閱文件。

B. 公民的與慈善的活動

法官可以參加並擔任非營利的公民、慈善、教育、宗教或社交組織之會員、職員、董事、受託人或非法律的顧問，並受以下限制：

(1) 法官不應加入有可能會常常與法官見面或經常在法院參與訴訟程序之組織。

(2) 法官不應提供投資建議給這類組織但可擔任其董事會成員或受託人，即便其有核可投資決定之責任。

C. 資金募集

法官可協助非營利的法律相關公民、慈善、教育、宗教或社交組之的資金募集計畫活動也可以被列為其職員、董事或受託人。法官可以為這類組織向不受其監督或不行使上訴審查權的法官及法官之家人招徠資金。除此之外，法官本身不應參加資金募集活動，為任何組織招徠資金，或為上開目的而使用或同意使用司法職位之名聲。法官本身不應參加會員之募集，若可能被合理認為是強迫的或本質上屬於資金募集之機制。

D. 財務活動

(1) 法官可以保有並管理投資，包括不動產在內，並從事其他有報酬的活動，但應避免利用其司法職務或使其涉入頻繁交易行為或與律師或其他可能常在其任職法院出庭之人有繼續性商業關係所生之財務及商業交易。

(2) 法官只可以擔任由其家庭成員所緊密持由與控制的公司的職員、董事、合夥人、經理、顧問或雇員。基此目的，「家庭成員」是指第3則C(3)(a)所定義的與法官或其配偶有三親等關係之親屬，與法官或其配偶維持緊密家庭關係之親屬或上述親屬之配偶。

(3) 只要法官不受重大財務損失，法官應撤銷可能會使其頻繁迴避的投資或其他財務利益。

(4) 法官應遵守司法會議餽贈規則對於收受餽贈之限制及要求餽贈之禁止。法官應致力於防止任何同居的家庭成員要求或接受餽贈，除非是司法會議餽贈規則所允許之範圍內。「法官家庭成員」是指經由血緣、收養或婚姻、或任何其他被法官當作家庭成員之人。

(5) 法官不應基於其業務職責外之目的而揭露或使用其司法職務上所取得之非公開資訊。

E. 信託活動

法官只可以為遺產、信託或第4則D(4)所定義之家庭成員擔任執行人、管理人、受託管理人、監護人或其他受託人。法官擔任家庭的受託人時受有下列限制：

(1) 若擔任受託人需時常出庭或該遺產、信託或受監護人涉及在該法官任職的法院的訴訟程序或屬於其上訴管轄範圍。

(2) 擔任受託管理人時，法官所受限制與財務活動之限制相同。

F. 政府任命

法官只可接受被任命為與法律、法律制度或司法執行相關的政府委員會或其他職位，或是聯邦法律所要求的任命。若該政府職責會傾向於逐漸損及公眾對司法的廉潔、公正或信賴，則法官無論如何不應接受任命。法官可在慶典場合或歷史、教育及文化活動中代表其國家、州或地區。

G. 法官室、資源及行政人員

法官不應利用法官辦公室、資源或行政人員來從事本守則所允許的業餘活動。

H. 報酬、補償及財產申報

法官可以接受本守則所允許法律相關的與業餘的活動之花費之報酬與補償，若其來源不會造成影響法官司法職權或不適當的感覺，並應受下列限制。

(1) 報酬不應超過合理額度或超過非法官者就相同活動所收受的額度。

(2) 花費之補償應限制在法官合理的旅遊、飲食及住宿的實際支出，以及基於場合所需，也包括其配偶或親屬之實際支出。任何其他額外的支付都是報酬性質。

(3) 法官應依法律及司法會議之法規與指令之要求而揭露包括餽贈與其他有價值之財物在內的財產。

註釋

第4則　完全阻絕法官的業餘活動不只不可能同時也不明智；法官不應與其所屬的社會隔離。作為一名司法官以及法律專業人士，法官對於法律、法律制度及司法執行之貢獻有著獨特的地位，包括修正實體與程序法及促進刑事與少年司法。在法官時間允許及不損及公正性的範圍內，應鼓勵法官獨自或經由律師公會、司法會議或其他法律組織來做這些事情。法官在同樣的限制之下，可以廣泛地從事與法律無關的活動。

法官在法律界限內（參照例如18 U.S.C. §953）可以就世界上所發生律師與法官被迫害的情事表達反對立場，如果該法官在合理調查後已確認該迫害是被迫害的律師或法官之專業責任與相關政府之政策或做法之間的衝突所引起。

配偶以外而與法官共組家庭且有親密關係之人應被視為第4則A(5)法律協助、第4則C資金募集與第4則D(2)家庭事業活動所稱的法官家庭成員。

第4則A. 法官可以教書及擔任法學院董事會，但在有營利的法學院則僅限於無決定權的諮詢董事會。

與本守則相符，法官可以鼓勵律師提供義務法律服務。

第4則A(4). 本守則一般性地禁止法官調解州法院所管轄的事件，除非在不尋常的情況（例如法官所調解的聯邦事件若不論及相關的州法案件將無法有效地解決）。

第4則A(5). 法官可以在所有法律案件中代表自己，包括訴訟或出庭或與政府機關的往來。此時法官不得濫用職

位而增加法官或其家人之利益。

第4則B. 某些組織的變動性質及其面臨訴訟的情形使得法官必須定期檢視其所參與的活動以便決定法官與該組織之夥伴關係是否適當。例如許多地區的慈善醫院現在比以前更常上法院。

第4則C. 法官可以參加與該條規定之非營利組織所舉辦的募款活動，但不得擔任這類活動的發言人，貴賓或節目的號召所在。 在同時列有其他地位相當人物或團體的資料與形象標誌之情形下，使用法官之姓名、職銜及司法機關的形象標誌在上述組織的信封標頭上是不違反第4則C之規定。

第4則D(1)(2)(3). 於第3則，要求不論進行任何程序的法官，若有得從中獲得經濟上利益者，無論多麼少，均必須迴避。第4則Ｄ則是要求法官於從事任何商業行為或理財活動時，若有任何可能妨礙其盡職務上應公正作為之司法責任的疑慮時，即應避免之。第4則Ｈ則是要求法官，於法庭外因活動而獲有報酬者，應有申報之義務。除了這些為了保障司法職務正確行使而要求的限制外，法官亦和一般公民相同擁有理財行為的權利。法官參與多數持股由家族持有之事業是可允許的，但若這樣的參與會耗費太多的時間，或是濫用司法威信，抑或其交易可能於該法官所任職的法院涉訟，那麼這樣的參與是被禁止的。從擁有投資標的或由投資活動中取得報酬不得影響法官職務之行使。

第4則D(5). 對於不公開資訊使用限制的規定，原不包括去壓抑法官於為了保護自己，法官的家族成員，法院員工或其他司法官員的健康及安全狀態時，所可展現的

能力。

第4則E. 僅僅只有居住在法官家事實的人，並不當然是本條所指之法官家庭成員。必須於法官待其如對待家庭成員者，始屬之。

本守則生效後，先前持續為信託服務關係亦適用之。

本守則所規定下的法官義務，可能會和法官於授信託關係中應盡之義務產生衝突，例如，當法官頻繁地符合須迴避的狀況，被要求依本守則第4則D(3)的規定處理，因而會導致信託財產的損害或剝奪時，法官應該辭任授信託人。

第4則F. 法官在衡量是否接受其他非司法性質職務任命之妥適性時，必須考量司法資源的有限性，以及保護法院免於可能被捲入爭議事件之必要性。若政府任命的其他職務會影響司法的效能、獨立性、法官本於司法職責的行為義務或將侵蝕公眾對於司法之信賴感時，法官應予以拒絕。

第4則H. 本守則除已規範之情形外，並不要求法官揭露其收入、債務或投資。但1989年之倫理改革法案和司法會議所頒布的施行細則，另對於法官收受報酬訂定額外的限制。在法官牽涉到接受報酬的任何安排時，均必須考慮到這個法案與施行細則的規定。上開所課予之限制包括下列數點，但並不以此為限：(1)禁止收受謝禮（其定義為因演講、出席或寫作而取得之任何利益），(2)禁止收受因擔任營利或非營利組織之董事、受信託人或主管而獲得之報酬，(3)因教學活動而獲得報酬者，須經事前的批准，(4)業外收入有一定金額的限制。

第5則：法官必須節制其政治性活動

第5則A 概括禁止事項：

法官不得

(1) 擔任政治組織的領導人或在其內辦公。

(2) 為政治組織或候選人發表演說，或公開支持或反對公職候選人。

(3) 捐獻給政治組織或候選人，或為其募集資金、支付稅捐、購買政治組織或候選人所發起之晚宴與其他集會之入場券。

第5則B 因競選身分而辭職：

無論法官所競選之公職為初選或普選，一旦法官成為候選人，即應辭去法官職務。

第5則C 其他政治活動：

法官不得從事任何政治性活動，但本守則不禁止法官從事關於第四則所規範之活動。

註釋

所謂「政治組織」，係指政黨、隸屬於政黨或公職候選人之團體，或其主要目的是為了要擁護或反對與公職選舉相關的候選人、政黨之團體。

本守則行為之遵從

凡是於聯邦司法系統內，有權執行司法職務之官員，即屬本守則所稱之法官，除下列規定外，所有的法官均應遵守本法官手則：

A. 兼職法官

兼職法官，係指無論是繼續性的或週期性的，以兼職之方式從事法官工作者。兼職法官被法律允許從事其他職業，也因此其等之報酬會較全職之法官為少。

(1) 毋庸遵守本守則第4則A(4)、第4則A(5)、第4則D(2)、第4則E、第4則F或第4則H(3)。

(2) 除「兼任治安法官利益衝突規則」另有規定者外，不得在其任職之法院或該法院所管轄之任何下級法院執行律師業務，或者在其曾任法官之案件或與該案件有關之其他程序中擔任律師。

B. 義務臨時法官

指經任命暫時性地擔任法官或特別助理法官

(1) 義務臨時法官任職期間，毋庸遵守本守則第4則A(4)、第4則A(5)、第4則D(2)、第4則D(3)、第4則E、第4則F或第4則H(3)；若僅是擔任特別助理法官者，亦毋庸遵守第4則A(3)、第4則B、第4則C、第4則D(4)或第5則。

(2) 曾經擔任義務臨時法官者，不得在其曾任法官之案件或與該案件有關之其他程序中擔任律師。

C. 退休法官

依美國法典第28編第371條(b)或第372條(a)之規定退休之法官，或依第178條(d)條件回任之法官，或退休後回任司法工作之法官，除第4則F外，應遵守本守則之全部規定，但仍應在擔任第4則F所不允許的司法以外職為期間，

避免提供法律服務。其他具有回任資格的退休法官應遵守本守則對兼任法官之規定，但準州或屬地之退休法官不在此限。在準州和署第之資深法官仍應依美國法典第28編第373條(c)(5)及(d)之規定，遵守本規則。

遵循之期限

適用本守則之人應於合理期間儘快安排自己的財務與信託事務，以符合本守則之規定，並於其接受任命後一年內完成。但在特殊情況下，對於某人要求上開時間完成與其發生利益衝突的可能性是不相當的，那麼該人可以繼續無償擔任不動產或非家族成員之執行者、管理人、受信託人或其他受託人，以免終止該關係將不必要地危害該不動產或他人之任何實質利益，但仍應經巡迴法院司法會議的核准。

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the "Compliance" section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies. Requests for opinions and other questions concerning this Code and its applicability should be addressed to the Chair of the Committee on Codes of Conduct by email or as follows:

Chair, Committee on Codes of Conduct
c/o General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

Procedural questions may be addressed to:

Office of the General Counsel
Administrative Office of the United States Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, D.C. 20544
202-502-1100

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether

disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

(A) Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

(C) Nondiscriminatory Membership. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

Canon 2C. Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See New York State Club Ass'n. Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors,

an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

(A) Adjudicative Responsibilities.

(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct of those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to

respond, if requested. A judge may:

(a) initiate, permit, or consider ex parte communications as authorized by law;

(b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;

(c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or

(d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

(B) Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

(2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.

(3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(4) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.

(5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

(C) Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy,

or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

(i) a party to the proceeding, or an officer, director, or trustee of a party;

(ii) acting as a lawyer in the proceeding;

(iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) to the judge's knowledge likely to be a material witness in the proceeding;

(e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the

securities;

(d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

(4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.

(D) Remittal of Disqualification. Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

COMMENTARY

Canon 3A(3). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes

the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

Canon 3A(4). The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.

Canon 3A(5). In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's

own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

Canon 3B(3). A judge's appointees include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians, and personnel such as law clerks, secretaries, and judicial assistants. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

Canon 3B(5). Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

Canon 3C. Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

Canon 3C(1)(c). In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A judge who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from

the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned under Canon 3C(1) or if the judge has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

Canon 3C(1)(d)(ii). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

(A) Law-related Activities.

(1) Speaking, Writing, and Teaching. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(2) Consultation. A judge may consult with or appear at a public hearing before an executive or legislative body or official:

(a) on matters concerning the law, the legal system, or the administration of justice;

(b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or

(c) when the judge is acting pro se in a matter involving the judge or the judge's interest.

(3) Organizations. A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.

(4) Arbitration and Mediation. A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.

(5) Practice of Law. A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

(B) Civic and Charitable Activities. A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social

organization, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.

(2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(C) Fund Raising. A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(D) Financial Activities.

(1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

(3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.

(4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.

(5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.

(E) Fiduciary Activities. A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the

following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

(F) Governmental Appointments. A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge should not, in any event, accept such an appointment if the judge's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

(G) Chambers, Resources, and Staff. A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.

(H) Compensation, Reimbursement, and Financial Reporting. A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the

appearance of impropriety, subject to the following restrictions:

(1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.

(3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

COMMENTARY

Canon 4. Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional

responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

Canon 4A. Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.

Canon 4A(4). This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (e.g., when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

Canon 4A(5). A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

Canon 4B. The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example,

in many jurisdictions, charitable hospitals are in court more often now than in the past.

Canon 4C. A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

Canon 4D(5). The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Canon 4E. Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

Canon 4F. The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

Canon 4H. A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges' receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving "honoraria" (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving

compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of "outside earned income."

CANON 5: A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

(A) General Prohibitions. A judge should not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or

(3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.

(B) Resignation upon Candidacy. A judge should resign the judicial office if the judge becomes a candidate in a primary or general election for any office.

(C) Other Political Activity. A judge should not engage in any other political activity. This provision does not prevent a judge from engaging in activities described in Canon 4.

COMMENTARY

The term "political organization" refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

(A) Part-time Judge

A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);

(2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court's appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

(B) Judge Pro Tempore

A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

(1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

(C) Retired Judge

A judge who is retired under 28 U.S.C. § 371(b) or § 372(a), or who is subject to recall under § 178(d), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of an extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. §§ 373(c)(5) and (d).

Applicable Date of Compliance

Persons to whom this Code applies should arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it and should do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the judicial council of the circuit approves.

（二）美國檢察官守則

前言
定義

第一部分：一般守則

1. 檢察官之責任
    1-1.1 主要責任
    1-1.2 社會和個人權益
    1-1.3 全職/兼職
    1-1.4 行為規範
    1-1.5 行為規範之不一致
    1-1.6 不當行為之反應責任
2. 專業化
    1-2.1 行為準則
3. 利益衝突
    1-3.1 衝突避免
    1-3.2 個人業務之衝突
    1-3.3 特殊衝突
    1-3.4 利害衝突之處理
4. 遴選，報酬及離職
    1.4.1 資格
    1-4.2 檢察長之報酬與職責
    1-4.3 助理檢察官及副檢察官之報酬
    1-4.4 福利
    1-4.5 工作負擔

2-4.3 資源分享
2-4.4 不當行為呈報義務
2-4.5 司法正義之促進
2-4.6 州檢察總長之協助

5. 與其他執法機關之關係
2-5.1 溝通
2-5.2 案件進行狀態之建議
2-5.3 執法之培訓
2-5.4 訓練之檢方協助
2-5.5 聯絡窗口
2-5.6 法律諮詢

6. 與法院之關係
2-6.1 尊重法院
2-6.2 在法庭內之尊重
2-6.3 不正當之影響
2-6.4 懷疑有刑事不法行為之處理
2-6.5 報告刑事不法行為之義務
2-6.6 迴避的適用

7. 與犯罪嫌疑人及被告之關係
2-7.1 與有委任辯護人之犯罪嫌疑人交談
2-7.2 與未選任辯護人之被告交談
2-7.3 不請自來之通信
2-7.4 認罪協商
2-7.5 委任辯護人之權利
2-7.6 在偵查程序與辯護人之協商

8. 與辯護人之關係

2-8.1 專業標準
2-8.2 妥適之關係
2-8.3 合作以實現正義
2-8.4 無罪證據之開示
2-8.5 對於犯罪行為之懷疑
2-8.6 對於違反律師倫理之報告義務
2-8.7 避免對所代表之客戶產生偏見

9. 與犯罪被害人之關係
2-9.1 傳達給被害人之資訊
2-9.2 犯罪被害人說明會
2-9.3 被害人之援助
2-9.4 合作協力
2-9.5 設施
2-9.6 被害人補償計畫
2-9.7 被害人援助計畫
2-9.8 被害人保護

10. 與證人之關係
2-10.1 證人之告知義務
2-10.2 證人與辯護人之接觸
2-10.3 有法律代表之證人
2-10.4 證人之面談與準備
2-10.5 專家證人
2-10.6 證人援助
2-10.7 證人之保護
2-10.8 設施
2-10.9 對證人施加犯罪之執法

3-2.1 搜索令狀與逮捕令狀之審查
3-2.2 通訊監察令狀之審核
3-2.3 執法人員之訓練

3. 大陪審團調查
3-3.1 大陪審團調查之範圍
3-3.2 證人之辯護人
3-3.3 傳訊受調查對象
3-3.4 大陪審團調查時之告知義務
3-3.5 向大陪審團提出之證據
3-3.6 作證義務
3-3.7 大陪審團程序中之傳喚(Grand Jury Subpoenas)
3-3.8 終止調查對象(target) 身分之狀態

4. 豁免權之准許（Grant of Immunity）
3-4.1 通則
3-4.2 授予或聲請豁免權—公共利益
3-4.3 准許豁免權後之偵查
3-4.4 為被告利益准予豁免權以取得證詞

第四部分：Pre-Trial Considerations 進入審判前之注意事項

1. 篩選
4-1.1 檢察職責
4-1.2 檢察官之裁量權
4-1.3 考量因素
4-1.4 不考慮之因素
4-1.5 資訊分享
4-1.6 持續評估義務

4-1.7 不予起訴之記錄
4-1.8 對不起訴之解釋

2. 提起公訴
   4-2.1 檢察官之職責
   4-2.2 適切起訴
   4-2.3 不適當之影響
   4-2.4 考量之因素
3. 分流處分(diversion)
   4-3.1 檢察官之職責
   4-3.2 分流處分（Diversion Alternatives）
   4-3.3 分流處分之需要性
   4-3.4 資料蒐集
   4-3.5 裁量之依據
   4-3.6 分流處分之程序
   4-3.7 分流處分(diversion)之書面記錄
   4-3.8 分流決定之說明
4. 審前釋放（Pretrial Release）
   4-4.1 檢察官之責任
   4-4.2 交保數額之要求
   4-4.3 持續性義務
   4-4.4 審前羈押之替代方案
   4-4.5 定期報告
5. 首次聽證程序（first appearance）
   4-5.1 檢察官之責任
   4-5.2 檢察官之角色
6. 預審程序(Preliminary Hearing)

4. 認罪協議之履行
    5-4.1 權力之限制
    5-4.2 權力之意義
    5-4.3 無力履行協議
    5-4.4 其他人向法院陳述之權利
    5-4.5 媒體之通知
5. 認罪協商之記錄
    5-5.1 認罪協商之記錄
    5-5.2 撤回起訴（Nolle Prosequi）之理由

第六部分：審判

1. 誠實公正面對法庭
    6-1.1 錯誤陳述
    6-1.2 法律權責單位
    6-1.3 提供不實證據
    6-1.4 一造辯論程序
2. 遴選陪審員
    6-2.1 調查
    6-2.2 陪審員篩選程序
    6-2.3 不附理由拒卻權
    6-2.4 持續期間
    6-2.5 陪審員身分
3. 與陪審團之關係
    6-3.1 直接通信
    6-3.2 解散後
4. 開場聲明

6-4.1 目的
6-4.2 限制

5. 證據呈現
6-5.1 合法性
6-5.2 合法性之可疑

6. 證人訊問
6-6.1 公平訊問
6-6.2 不當提問
6-6.3 交互詰問之目的
6-6.4 彈劾和可信性

7. 異議及請求
6-7.1 程序
6-7.2 防止偏見之聲請

8. 向陪審團之結辯
6-8.1 性質
6-8.2 個人意見

第七部分：量刑

1. 量刑
7-1.1 公平量刑
7-1.2 量刑之投入
7-1.3 減輕罪責之證據
7-1.4 量刑前報告（Pre-Sentencing Reports）

2. 緩刑
7-2.1 量刑前報告之角色
7-2.2 檢察官係重要資源

前言

本守則之目的在於提供檢察職權行使時之指導方針。除另有說明外，適用於任何檢察署之檢察長（不論稱謂如何）及副檢察官、助理檢察官。

本守則之目的係補充性質，而非取代現行各司法管轄權內之倫理準則。

一般而言，解釋本守則應與現行法律及司法倫理準則具有一致性。

本守則之目的在於成為檢察官行使檢察職權時之指導原則，然因多樣性之專業及倫理問題，並無一成不變之規則。

因之，適用本守則之規定時，不會構成是否缺乏專業性之問題，仍取決於該附隨之狀況。

本守則之目的，並非用以：(a)司法機關決定檢察官是否犯下錯誤，或從事不當行為；(b)政風機構指控違反道德操守情事；(c)創設任何訴訟權；或(d)改變既有法律。

本守則附隨註釋之目的，在於幫助檢察官理解及解釋本文；並非本守則之正式部分。如遇註釋與守則本文不一時，應以本文作為檢察官行為之指導依據。

定義

〝管轄區〞係指檢察官職權所及之政治疆域。依適用法律和司法倫理之內涵，〝管轄權〞亦指美國的〝州〞。

〝知道〞、〝具備知識〞或〝擁有知識〞均指真正之知悉。

〝不當行為〞係指藉由相關司法倫理規範將某行為定義為不當行為。

〝檢察官〞除另有特別說明外，係指正在行使檢察官職權之人。

〝司法倫理規則〞是指專業行為準則、律師行為規則、專業責任規則或適用於各轄區內規範辯護人行為之律師行為法典。此名詞並非指美國律師協會之專業行為模範法典。

〝特別檢察官〞係指在一管轄區內行使檢察職權之人，但非係該轄區經由選舉或指派產生之檢察長，亦非該轄區內之助理或副檢察官。

第一部分：一般守則

1. 檢察官之責任
2. 專業化
3. 利益衝突
4. 遴選、報酬及解職
5. 遴選與培訓
6. 檢察豁免權

1. 檢察官之責任

1-1.1 主要責任

檢察官係獨立之司法行政官，其主要之責任在於追求正義，僅可透過事實之呈現及證明加以實現。此責任包含但卻不僅限於確保有罪者受到追訴、無辜者免受不必要傷害、及所有參與者（特別是犯罪之被害人）之權利受到尊重。

1-1.2 社會和個人權益

檢察官應積極的保障每個個人權利，而非代理任何人。檢察官在個案行使裁量權時，均應將社會權益擺在最重要地位。在適當及必要時機，檢察官亦應尋求刑事法律改革，並將社會利益列為優先考量，而非個人或任何團體之利益。

1-1.3 全職/兼職

檢察長在其管轄區內應係全職之工作。作為全職之檢察官，無論是否為檢察長，都不能從事私人律師業務，也不可因之獲取職務外之利益。但在某些無法或不願維持一位全職檢察官之管轄區內，該檢察長可以係兼職，但即使是兼職時，仍不得有從事與檢察獨立牴觸之職業行為。

1-1.4 行為規範

檢察官應遵守其管轄區內之全部司法倫理規範。

1-1.5 行為規範之不一致

最終檢察官仍應受其轄區之倫理規範所約束。若該規範與本守則有所衝突時，仍應遵守其轄區之倫理規範，並須努力嘗試修改該規範，而與本守則趨於一致。

1-1.6 不當行為之反應責任

檢察官對於以下已經、將要或可能妨礙司法公正之不當行為，都有呈報之義務：

a. 當檢察官知悉檢察機關相關人員，有從事或有意從事可能妨礙司法妥善運作之不當行為時，應依其機關內部之處理程序呈報。

b. 若其機關內部缺乏足夠之程序以解決不當行為之呈報時，知悉之檢察官應先行要求該人員停止該不當行為。如此之要求不見回應，或情節十分嚴重時，其應向該機關內部之高層報告。

c. 若檢察官盡其最大努力，仍未見依照程序糾正該不當行為時，即應在州法律及倫理規範允許下，向檢察機關外部之適當官員報告。

d. 檢察官未能報告其所知悉之不當行為時，即構成了檢察官專業倫理規範之違反。

評釋

在美國法，檢察官是刑事程序中唯一負責將事實真相予以呈現之人。正義有待真相才得以伸張，真相發現則是刑事程序之首要目標。檢察官不像律師一樣，僅是單純辯護者及代表個人或實體；檢察官代表整個社會。以此身分，檢察官必須獨立判斷作出決定，並考量各相關人員利益，包括被害人、證人、執法人員、嫌犯、被告，及雖與特定案件並無直接利害關係，卻仍會受到審判結果所影響之社會成員。

作為整體社會之代表，在刑事司法體系之立法過程中，檢察官應扮演積極角色。在此角色中，檢察官應依其獨立價值判斷，為社會最佳利益支持配套立法。

全職之檢察長對於其轄區有許多益處；其一即在於檢察官並非私法之實踐者，檢察官可促使其他執法人員間之有效溝通，而其決定與表現則更能獲得社會信任，亦不易受到各種可能利益衝突困擾。

儘管如此，美國仍有不少兼職之檢察官。此種情況大都在於人口較少、管區不大、預算及工作量都不足以指派全職檢察官之地區，但為了該地區需求而配置。此情形之檢察署仍與其他地區一樣，有接近全職之配置標準。

無論是全職或兼職檢察官仍應被視為是重要工作，不應當作是一個跳板或副業，亦即檢察官應把公務置於首位。無論檢察官參與任何活動時，其公共責任都應列為優先。兼職檢察官不應在刑事案件中代表其他個人，此乃因檢察官之自身可能衝突，且可因此降低檢察效能。

幾乎所有地區都以某種形式採納「美國律師協會」所訂之職業倫理守則。少數州所採用之規則尚未完全著墨於檢察官所應背負之公共責任，而這些規則卻是檢察官所必須遵循。因之，檢察官參與規則制定及採納之過程亦形重要。

依照適當之程序及討論，檢察官可挑戰不公正或不適當之條文。任何守則或規則均不應排除檢察官追求正義及為公眾利益服務之職責。在此意義上，檢察官角色並不全然可與律師公會成員畫上等號。若檢察官選擇忽視一個法律或規則，乃因其相信追循正義應與之畫上等號，並了解到核准執業之權力機關可能並不如此同意。

因追尋正義係檢察官之責任，對於不當行為或未能達成職責時，檢察官均不可視而不見或充耳不聞。為了此預做準備，檢察長須建立內部之行政程序以應付此不時之需。若無此程序時，檢察官則須向其檢察系統更上級之長官報告。

檢察官已盡力呈報不當行為，並已依程序在檢察體系內反應，檢察體系高層仍無行動時；檢察官應依各地區之

司法倫理規則，向檢察體系外部之適當機關反應。在某些情況下，如檢察官認為檢察體系高層做出之決定並不妥適時，檢察官應在採取其他行動前，先與制度規劃下之廉政官員或州之廉政官員進行討論。

2. 專業化

1-2.1 行為準則

無論在法庭內外，檢察官都應以高標準之正直品格應對其面對職業上之關係。適當行為包含（但並不以下列各項為限）：

a. 檢察官對於所有往來之行為，都應該坦率、誠信、且不失禮節。
b. 檢察官與對造辯護人溝通、交換、協議時，均應以誠信行事。不因個人立場、意見而表現出敵意。
c. 檢察官應對法院表現出適當之尊重，除在適宜之時間、場合，始得以對司法之個別成員提出公正之批評。
d. 檢察官應準時出庭，因不可避免之缺席或遲到時，應即時通知法庭和對造辯護人。
e. 檢察官在訴訟程序中，都應適度自制與尊嚴行事；破壞性之行為或過度爭辯均應避免。
f. 檢察官應公正、專業地對待證人，詢問證人時不應有虐待、污辱或貶低之行為，僅可在法律允許範圍內彈劾證人之可信性。

g. 檢察官應避免拖延及不當之訴訟策略。此包括（但不限於下列之例）：

- 浮濫或只為擾亂對造辯護人之異議。
- 試圖採取與法院決定不一之方式進行訴訟。
- 試圖提出明顯不恰當之問題，或提出顯不被允許之證據。
- 採取拖延行動或策略。
- 製造或利用不法之偏見或媒體之有害評論。

評釋

遵守倫理規範是檢察官之義務，亦係基本且最低之要求。當檢察官不能達到此標準時，一般均會期待該個案之檢察官或個別之檢察官受到應有之制裁。

基於該職業之尊嚴與榮耀，檢察官被要求遵守更高之專業倫理標準，本守則要求在所有活動下，檢察官都應具備正直、公正和禮貌，而不論對象係被害人、證人、執法單位、對造辯護人、法院、陪審員，或被告。

本守則依各地區律師公會所提出之專業倫理準則，認為於檢察官（無論是新進或有經驗者）遭遇壓力情形下，應予以激勵與鼓舞。儘管專業倫理難以明確定義及解釋，但本守則所列之數種行為準則都經過深思熟慮，且特別適用於訴訟程序中，尤其在於雙方當事人劍拔弩張時；而被強力推薦之理由，則在於若檢察機關能採用並遵守時，對造辯護人亦應會比照辦理。

3. 利益衝突

1-3.1 衝突避免

檢察官不應為獲取利益，以致其從事之財務相關活動與其檢察機關職責產生衝突、重大潛在衝突，或顯露出合理可能之衝突。

1-3.2 個人業務之衝突

在未禁止檢察官執行個人業務之司法轄區內：

a. 檢察官執行個人業務時，儘管該案件在該轄區尚未決定，仍不應代理涉及或可能涉及刑案之客戶。
b. 檢察官應避免基於檢察官地位之利益，而擔任個人客戶或潛在客戶之代理人。
c. 檢察官不應將其檢察官名銜，放在信封抬頭或對外宣稱、廣為週知，或以其他方式使用於其個人業務上；且不應利用檢察機關資源從事非關檢察之事務。
d. 檢察官應迴避現在客戶之刑事調查、追訴，並應取消後續之代理。

1-3.3 特殊衝突

在禁止檢察官執行個人業務之司法轄區內：

a. 檢察官應迴避從前客戶所涉及之調查或追訴，除經由完全揭露、或有該客戶之書面同意。

b. 檢察官應迴避先前代理而善意知悉、或因律師客戶間私密特權取得資訊而進行之調查、追訴，除經由完全揭露、或有該客戶之書面同意。
c. 檢察官應迴避先前擔任代理人、或父母、子女、兄弟姊妹、配偶、同居人或重大財務關係人等關係所涉及之調查或追訴。
d. 當檢察官有個人利益關係，以致將造成公平客觀之人均將懷疑檢察官中立性、判斷力、及法律客觀之執行力會有所妥協時，檢察官應即迴避。
e. 若助理或副檢察官得知有任何衝突可能時，須立即呈報檢察長或其指派之人。

1-3.4 利害衝突之處理

檢察署都應建立實際或可能之利害衝突處理程序。此程序應包括（但不應限於）如下：

a. 建立防火牆或考評部門，以確保有此情形之檢察官不會不恰當地被公開到媒體，或不恰當地暴露相關訊息。
b. 精確地記載處理方式，以確保公眾對檢察官機關之信賴。

1-3.5 特別檢察官

當實際或可能之利害衝突存在，致將妨礙檢察機關對於刑事案件之偵查或追訴，檢察機關應任命或尋求「特別

檢察官」之任命，或依法將此事提交適宜之政府機關。

特別檢察官受任命之情形：

a. 該特別檢察官應係紀錄良好之州律師成員，對受任命案件有相當經驗，且應與檢察機關有充分區隔，以免受到任何實質或可能利害衝突之影響。

b. 特別檢察官僅對其受任命之案件擁有權限。

c. 為避免出現利害衝突，檢察長及其助手、員工等都應提供特別檢察官適宜之協助、合作及支援。

評釋

少有「道德取向」之議題較「利害衝突」之議題更普遍。利害衝突不僅源於檢察官與其當前或過往客戶之關係，亦因檢察官之其他活動（如財經或其他活動）而產生。

利害衝突問題係基於一前提，即人們無法同時進行可預見有互相利益衝突之兩件事。

利害衝突對於檢察官與個人執業者是不同的，因為檢察官無從選擇偵查案件，檢察機關亦無從選擇案件之進行。

本守則知悉利害衝突存在於所有轄區內，包括前客戶或因過往之代理而取得之資訊，僅有在當事人放棄權利，允許檢察官繼續參與時，檢察官才可繼續案件之進行。

防火牆或考評篩選機制之標準，取決於檢察機關或轄區規模、媒體關注度、案件類型，及有利害衝突之檢察官在檢察機關之地位。若防火牆等方法無效或將可能無效時，檢察長應尋求夠資格之特別檢察官，並給予適當協助。

4. 遴選，報酬及離職

1-4.1 資格

除法律另有規定外，得以參選、接受任命、或受雇成為檢察官者，限於該州律師協會中聲望卓著之會員，即便任職檢察官期間，亦應如此。檢察長則更應是該司法轄區內之居民。

1-4.2 檢察長之報酬與職責

檢察長所得報酬應與其職責相當。全職檢察長之薪資至少應相當於其轄區內負責審判事務法院之院長，且在其任期內不應予以調降。

決定報酬之因素包括（但不限於）：

a. 為了司法轄區之利益，應鼓勵高素質之人才尋求擔任具有前途性之檢察官職位。
b. 相當於私人法務、私營企業或公職中類似責任職位之薪資水平。

1-4.3 助理檢察官及副檢察官之報酬

檢察長之報酬並非助理檢察官報酬上限。決定報酬之因素包括（但不限於）：

a. 為了該司法轄區利益，應鼓勵高素質人才尋求擔任具有前途性之檢察官職位。

b. 相當於私人法務、私營企業或公職中類似責任職位之薪資水平。

此外，決定報酬時不應考量（但不限於）下列因素：

a. 與檢察官執行職務能力無關之特質，及傳統令人反感之歧視，包含種族、性別、宗教、國籍和性別傾向等。

b. 隸屬之政黨或參與之政治活動。

c. 行使檢察權所產生收益，如資產沒收或費用徵收。

1-4.4 福利

檢察長應確保助理檢察官都可享有與其職責相當之福利制度，包含提供保險以支應其因執行檢察官職務而遭到民、刑事訴訟時，所生之一切費用。

1-4.5 工作負擔

除特殊情況外，檢察官不應維持或被要求維持與其職責不相當之工作量，以確保正義在個案中獲得實現。

1-4.6 離職

檢察長享有任期保障，除經過正當法律程序，不得任意解職。檢察官之解職事由不應（但不限）包含下列因素：

a. 與檢察官個人工作能力及表現無關之人格特質因素，及傳統之歧視，包含種族、性別、宗教、原始

國籍、性別傾向等。

b. 不影響行政效率，合法且合乎司法倫理之政黨活動。

c. 拒絕參與政黨活動。

1-4.7 助理檢察官之免職

助理檢察官及副檢察官須依其職務之法律和程序始可將其免職，免職事由不得（但不限）包含下列因素：

a. 與檢察官個人工作能力及表現無關之人格特質因素，及傳統之歧視，包含種族、性別、宗教、原始國籍、性別傾向等。

b. 不影響行政效率下合法且合乎司法倫理之政黨活動。

c. 拒絕參與政黨活動。

註釋

檢察長須為該司法轄區居民，乃因其係經由特定社群之支持產生，並隨時提供執法人員諮詢，且隨時應變緊急或特殊事件。雖在某些司法轄區內，經撤銷律師資格並不會讓檢察長因之喪失掌管該檢察機關權限，但基於公益仍可決定其去留。

若檢察機關效能要達到最大化，提供適當薪水待遇是絕對必要的。適當薪水待遇才足以使具有能力之候選人競逐職位。若無如此報酬，有能力之人將轉向私人執業或其他職位。

檢察官薪水至少必須與該區域之審判體系法官之薪水相同。如同國家諮詢委員會（National Advisory

Commission ）在刑事司法標準與目標（1973）中所提及：有關薪水部分，檢察官薪水必須和地方刑事審判體系之最終審判法院首席法官同等視之，因兩者在執行職務時皆需運用廣泛之專業裁量。在此相同基礎下，對於機關首長給予相同待遇係合理的。

足夠薪資待遇對於降低地方檢察官之流動率亦是必要的。檢察官所具備之技能與判斷力會隨時間及經驗的累積而隨之成長。為了替人民留下優秀檢察人才，檢察官因其表現獲得之薪資及福利，應相當於同級專業人士在其他領域之水準。若無足夠薪資將優秀檢察官留下，則檢察署將只能成為法律人才培訓基地，人民亦無法擁有優秀之檢察官為其服務。

檢察官有責任在每一個案中尋求正義，則應花費相當時間在確保問題已經充分調查，並經充分評估案件之處理方式。對於進入審判之案件，則應將準備工作以有效率之方式完成，如提供專家意見和專業技術說明，以佐證檢方在個案中之論據。

因檢察官須進行深入調查、評估、準備公訴、和公訴，其不應因大量案件致不堪負荷程度。若檢察官工作量超載時，為服務人民留下優秀且經驗豐富檢察官，即會有困難。

雖無表明檢察長或助理檢察官離職之具體原因，但本守則要求似此行動須經過正當程序。同樣重要的是，離職原因不應出於對檢察官有種族，性別，宗教，國籍或性別取向之歧視。

參與或拒絕從事黨派政治活動不應成為離職之原因，

除非上開政治活動已妨礙到檢察官職務執行。

檢察官須恪遵追求正義之責任。若檢察官發現其公共信賴已降低至其無法履行此一首要責任時，即應考慮去職。

顧及刑事司法訴訟之性質，一保險計畫以支應檢察官因執行公務所產生民事訟爭之相關訴訟費用、敗訴補償等即形重要，俾使檢察官在可能面對耗費時間、費用之民事訴訟（即使全然欠缺理由）威脅下，仍能無後顧之憂地追求正義。

5. 人員進用與培訓

1-5.1 交接期之合作

當某人被選舉或指派為檢察官時，現任者於可能情況下，應在內部移交時與新進者全力合作，以使新任者有效率地繼受檢察體系之專業文化。若可能的話，此合作應在新任者尚未就任前，即為新任者指定特別助理，以對新任者進行匯報，並使新任者了解該機關內特別程序和審議案件，此包括大陪審團及調查案件。

1-5.2 助理檢察官和副檢察官

無論頭銜，助理檢察官和副檢察官由檢察長選任，且除法律另有規定或契約另有約定外，應聽從檢察長之指揮監督。

a. 除法律另有規定或契約另有約定外，助理檢察官和副檢察官必須是州律師協會中活躍且聲譽卓著之會員。
b. 助理檢察官和副檢察官應依能否勝任有關之個人成就、經歷和特質來選任，不應在任用、留任或拔擢時，摻入與檢察職務無合理關連之個人或政治考量。
c. 若無特殊情事，檢察長任用或拔擢助理檢察官或副檢察官時，應使承諾，在至少數年內能夠有持續良好表現。

1-5.3 新進人員訓練及在職進修

檢察官應在開始執行職務時及每隔一段期間後，參加正規培訓和進修計畫。檢察官應找尋特與檢察效能有關之在職進修機會，且：

a. 檢察長應加以指導使檢察官都能參加合適之培訓與進修計畫。檢察長亦應對於合適之國家培訓計畫加以了解，並使其本身及同僚參與合適之在職進修計畫。
b. 檢察長應參加由州、國家之協會、組織所資助之培訓計畫。
c. 基於指揮職責，檢察官之在職教育應包括有管理課程，例如員工關係與預算編製。
d. 檢察長應確保每名新進檢察官都能熟悉本守則之規定，以及其轄區內採用之倫理準則與職業精神。
e. 檢察長應在其檢察署區分出一部分資源，以使檢察官能夠獲得關於倫理準則與職業精神之指導。

f. 在有強制要求在職進修之區域內，檢察官應勤於達到或超越所要求之標準。
g. 檢察署應編製適當預算以支應內部之訓練計畫及參加外部訓練計畫所需之經費。

1-5.4 機關政策及工作程序

檢察機關都應準備可供檢索之政策及工作程序書面或電子說明書，以說明其檢察裁量權之行使，並利於其機關內輔助人員之工作。

註釋

犯罪調查、開庭前準備、開庭及檢察機關之例行事務不應隨著選舉週期起舞。因此，如何使檢察職務不因任期屆滿而中斷，對於有效率之公益代表人是非常重要的。由於檢察機關大部分工作都是秘密進行的，所以要讓新任檢察長快速適應工作方法，即有指定特別助理以完成秘密之事務簡報說明必要。對新任或即將離職者言，拋開選舉紛歧，發揮專業素養，為全體人民實現公理正義，是非常重要的。

在遴選助理或副檢察官時，檢察長除確認是否在轄區之律師協會中聲望卓著外；更應適時審視能否帶給檢察機關利益。在雇用、升遷或留任時，務必考量其教育背景、工作經驗、判斷能力、溝通能力（書寫及口語）、開庭技巧與其個人特質，而非基於人際關係。

檢察長均期盼其助理或副檢察官承諾至少之工作時

間，且由其決定期間之延長或縮短。因檢察官大多在法學院畢業後即被雇用，需要時間之訓練與經驗累積始能在工作上有良好表現。因此，承諾適當工作時間方可使檢察機關確保投入資源之利益。即使新任檢察官本身已具備相關工作經驗，仍需些許時間以適應新的跑道，尤以在某些情況下，為讓檢察官能順利執行職務，亦需一段時間以消除可能之利益衝突。

若可能的話，檢察官聘用員工比例應反映當地居民之組成結構，此亦為其應盡之責任。欲達成此一目標，須聘用符合資格之少數族群，並將該聘用規則納入機關作業程序中。儘管檢察官並無達成預定聘用名額之絕對責任，但若機關成員可以充分代表全體人民，對檢察官絕對是有利的。

概念上，員工訓練可以分為兩大類。第一，可稱之為「新進人員培訓」，在於提供新進之助理、副檢察官或檢察長瞭解其在刑事司法體系中之責任，及其等被要求在職場之技能。對於新進檢察長之新進訓練及簡報，應集中於辦公室之管理技能，尤以在有較大之司法管轄區域時更形重要。對於新進助理檢察官之基本培訓，則可包括熟悉機關架構、程序和政策、法院系統、警察機關運作、道德訓練、專業行為準則、法庭禮儀，及與法院、辯護律師協會互動之關係等。

訓練之第二個面向，則應讓每一位檢察官接受「在職教育」。首先，檢察官必須遵守其轄區內有關在職之法學教育要求，訓練內容應該是檢察官相關職責。對於檢察長及擔任管理職位之檢察官，宜納入人事、管理及預算處理等課程。對於其他檢察官，則專注在實體法規、證據法

則、法庭證據，及其他基於職責應瞭解之相關法規。雖某些規模較大機關有培訓部門可提供所需之訓練，但檢察長更應瞭解到整體國家刑事司法體系之進展。檢察官可自此類培訓中獲益，乃因可更新最新之訴訟技巧，同時強化為人民實現公理正義之能力。

檢察長務必致力於要求檢察官熟悉倫理規則與專業職責，並應提供可學習履行職責所需知識、技能之機會。檢察長須確保機關內全體檢察官均瞭解司法倫理之規則及專業法規之工作知識。此外，檢察長應致力於創造鼓勵同仁討論司法倫理和專業注意事項之組織文化。此外，若有其他私下諮詢，檢察長亦得提供一些著名案例以供參考。

本守則強調對於檢察官之教育訓練必須分配預算，因教育訓練在於確保檢察工作之效率和效能方面扮演了重要角色。同時消除一般人誤解教育訓練係非必要之附屬品，或在預算壓力下可優先被削減之項目。

機關政策與工作程序書面化之最大優點在於確保一致性。基於民選之身分應為檢察權之運作對社會大眾負責，故檢察權之行使在許多標準下被認為最適合單獨由檢察長行使。而為了促成一致性，如何確保助理檢察官和其他工作人員執行職務時均符合檢察長之政策，即為重要。因助理檢察官可在個別案件中發揮其最佳之專業判斷，為避免因經手檢察官之不同以致被害人或被告受到不同之對待，故有一致性之必要。

小型檢察機關與大型機關運作差異是可想見的。在小型機關中，經由長時間相處，職員間都能夠清楚各檢察官之辦案原則，似此形諸於文字之工作守則，僅為彼此參考

及避免誤會之用，通常不須將相關規則如大型機關般之鉅細靡遺。然而，在大型機關內，由於職員經常調動，且組織龐大各司其職，助理檢察官亦有兼職者，或不在同一地點工作者，為了顧及檢察事務之嚴謹性與一致性，詳細之工作守則與標準作業程序即顯重要。

明確訂立工作守則及標準作業程序對新進職員之訓練亦有益處。新進檢察官、助理、書記官、實習生等對於檢察機關內事務運作可能無從知悉。無論機關大小，舊職員可能因自身工作自顧不暇而無從對新人加以指導。即使舊職員能騰出時間指導新人，如何清楚對新人闡述個別職責亦成問題，尤其是有大量資訊必須傳遞時。形諸文字之工作守則能有效補強口頭之指導，亦是檢察官職涯之最佳工作圭臬。

採用形諸文字之工作守則，亦可對職員專業知識及素養有效提升。工作守則中有關書記官之作業事項，如統一不同文書格式，及文件歸檔相關作業等。有關專業法律人員部分，詳載簽發令狀、證人訊問步驟等。工作守則之其他部分詳載如何進行陪審候選人之質問、陪審審理、大陪審團、或準備程序等。即使相關知識已存在於其他文獻中，透過工作守則之訂定與撰寫能讓此知識之獲得更加便捷。

因檢察事務具備高度機密性，故由檢察官決定是否將適宜公布於眾之資料予以公開，並決定高度機密資料之公開程度。倘檢察署缺乏機關政策和工作程序時，應與當地、國家和國家協會等檢察機關合作，以減輕初期發展之負擔。

6. 檢察豁免權

1-6.1 豁免範圍

檢察官在其職責範圍內履行職務，應享有最大範圍之民事賠償之免責權。因檢察官職權行使而生之民事訴訟費用，包括律師費、裁判費等；檢察長應明瞭並採取相關措施，且此費用應由檢察基金（ Prosecutors funding entity）來負擔。

評釋

於Imbler Vs. Pachtman，424 US 408（1976年）案中，美國最高法院認為，檢察官在職務範圍內執行偵查及公訴職務時，依據權利法案Section 1983, 42 U.S.C.享有絕對豁免權。該法院指出，雖此豁免權使真正被冤枉、自由被剝奪之刑事被告無從對檢察官之惡意或不誠實行為採取民事訴訟，但檢察官豁免權卻較廣泛之公眾利益更有價值，因此可確保檢察權蓬勃和無畏之表現，此正是刑事司法體系正常運作之本質。

但法院並未將此絕對豁免權擴張至檢察官超過其職責外之行為；因此Imbler案並未改變傳統上認為應係警方調查之職責範圍。

雖於Imbler案後，有眾多案例接續討論檢察官豁免權在「行政」和「調查」職責間之分際，但尚未建立明確之界線。

為了確保檢察官自由和無畏地履行其重要職責，檢察基金應支應包括檢察官職權行使而生民事訴訟之相關律師費及訴訟費用，但超出檢察官職權行使範圍者，則不應期待可獲得完全照應。

第二部分：關係

1. 與地方團體之關係
2. 與州刑事司法機構之關係
3. 與國家刑事司法機構之關係
4. 與其他檢察機關之關係
5. 與執法機關之關係
6. 與法院之關係
7. 與嫌疑人及被告之關係
8. 與辯護律師之關係
9. 與被害人之關係
10. 與證人之關係
11. 以社區為基礎之計畫
12. 監獄
13. 假釋和提前釋放
14. 檢察官和媒體
15. 與檢察基金之關係
16. 與公眾之關係
17. 與非政府組織之關係

1. 與地方團體之關係

2-1.1 檢察長之參與

檢察長得以合理相信某團體係以合法方式保護公共安全時，須參與其轄區內以提昇刑事司法效能、效率及公平為目標所建立之地方團體。但只在檢察官得以確實履行職責之範圍內，始能承擔社區團體之代表。

2-1.2 資訊提供

法律允許範圍內，為解決轄區內經確定之問題，檢察長得提供相關訊息、建議及資料予上開刑事司法團體；並考慮可解決上開問題之適當策略。

2-1.3 組織建立

若轄區內尚未建立機關間提昇刑事司法效率、效能及公平為目的之團體時，檢察長應考量似此組織之可能利益，若認為有效益時應提供該組織建立之指導。

2-1.4 社區中之檢察權

檢察長應尋找機會參與學校、社區青年團體、公共服務機構、鄰近犯罪防治團體及其他相類似組織，以盡力防治及偵查犯罪。

2-1.5 檢察權提昇

為提昇及促進法律社群中之檢察功能，檢察長應參與國家及地方之律師協會組織。

2. 與州刑事司法機關之關係

2-2.1 州協會之需求

每州都應有檢察官協會以服務及回應其成員之需求及提昇檢察效能。檢察長須係積極參與該協會之成員，且應讓其助理及副檢察官參與該協會。每州之檢察官協會須提供最有利於全州發展之服務，包含（但並未限定於）以下：

a. 在職教育。
b. 經選舉產生新進檢察長及其員工之培訓。
c. 管理訓練。
d. 自辦訓練計畫之支援。
e. 資訊傳播（簡訊、佈告欄等）。
f. 分享辯護專家為交互詰問所製作之證詞筆錄。
g. 技術支援規劃、管理、訴訟、上訴等，包含維護資料及摘要保管。
h. 訂定辦公室管理策略及程序規範。
i. 調整尚未計畫或經常性使用之資源。
j. 監控立法進展及草擬立法草案。
k. 保持各檢察署間之聯絡。

l. 創新計畫之開展。

m.電腦系統之發展及研考。

2-2.2 檢察權之強化

檢察長為強化及增進檢察職能目標，應盡可能地參與全州之委員會、工作團隊或其他組織。檢察官在其州內所應盡之義務，在於盡最大努力所能達到範圍為限。

3. 與國家刑事司法組織之關係

2-3.1 檢察權之強化

檢察長應在盡其可能範圍內，積極主動參與強化及增進檢察功能之國家刑事司法組織。檢察官則僅在盡力所能達到範圍內，在國家性組織內盡其義務。

2-3.2 檢察官之投入

檢察長應設法確保國家之刑事司法組織能以合理方式，廣納現任州及地方檢察官之實際經驗及觀點，用以調查、研究並制定有關檢察官及檢察功能之標準、規則及協議。

評釋

為了改進刑事司法體系，檢察官應參與地方、州及國家事務，並承擔包括對於政府機關、公民團體等提供資訊

及建議，以讓立法機關進行審查及考量；更應參與刑事司法相關之計畫與方案。好的檢察官與好的律師一樣，都被期待能活躍於地方及州之律師公會。

本守則知道近20年來有些特殊利益團體快速成立，例如不能安全駕駛執法、性侵害預防與諮詢計畫、配偶及兒童虐待預防、反毒教育計畫及鄰里守望計畫等，使有興趣且明瞭之公民成為執法機關之得力夥伴。本守則鼓勵在缺乏如此組織之區域內，檢察官應考慮激發並促成公民利益之適當方法。

由於檢察機關具有地區性，檢察機關之職責可能較專業政府部門更為多樣化。舉例來說，市民投訴之範圍可從如何應付鄰居孩子到如何收取空白支票。對於執法機構和法院之期待亦同樣之多樣化，且更加嚴格。在許多管轄區域內，檢察官亦係該郡之律師，似此職責要求都在專精化，包括稅務、學校法、地方制度法、財產法、勞工規則、衛生法、環境法和勞動關係等。

若檢察機關被設計成須應付轄區內之特別需求，不僅會形成沈重財政負擔，且會造成郡與郡、區與區間嚴重疊床架屋。換言之，對於檢察體系來說，由地方啟動、機動性及可責性是不可或缺要素。因之，緩解此問題之方法乃藉由成立全州之檢察官組織來解決，此亦是美國州檢察官協會長期以來懷抱之想法。

而如此組織應由全體檢察官組成，並有全職職員。此組織應能積極回應成員之各項需求，其結果將產生不同之功能。人口密集之區域則可能含括了本守則所列之全部項目。

由於如此組織之目的在於服務檢察官，檢察官之參與及支持運作則是重要的。成為會員應是全體檢察官之責任，組織之支出應由檢察預算支應。成員也不限於檢察長，即使助理檢察官亦能參與。

此外，檢察官如認同各州律師公會、檢察官協會之功能價值，更應投入時間自願性的支援，如擔任委員會委員。

同樣地，地方選出之檢察官及其員工為了促進有效執法，亦應加入及支持全國性組織。此組織作為地方檢察官之討論平台，為全國性之立法及政策決定發聲。而其相關計畫包括訓練、出版、技術資源、焦點活動（例如：毒品執法、受虐兒童執法、環境法律之相關執法等）等則提供地方檢察官高於州層級之視野。地方檢察機關若未能積極參與地方、州及國家之協會，將導致彼此間競爭關係。重點在於檢察官自願性的投入時間並非不切實際，因為可同時滿足其在工作上之需求。

4. 與其他追訴機關之關係

2-4.1 追訴合作

檢察官認知到其與其他追訴機關之共同目標均在於司法正義之實現，則應與聯邦、州、軍事、特別及地方追訴機關在案件之調查、起訴、撤回或追訴中相互合作。

2-4.2 共同追訴

檢察官應建立程序，盡可能探知被告之相似行為是否經其他有管轄權機關調查中或將被起訴之可能性；且應在偵查中與相關追訴機關相互合作，避免不必要之重複追訴，亦如減少一事不再理或免訴等偵查瑕疵。

2-4.3資源分享

檢察官在合法及必要情況下，應分享資源及調查資訊給其他偵查機關，以確保司法正義得以實現；而不應考量政治力介入及黨派利益之影響。

2-4.4 不當行為呈報義務

檢察官得知其他檢察官有不當行為或不適任情形時，其應依照本守則第1-1.6規定呈報。當此行為牽涉到其他追訴機關之檢察官，而可能影響到司法行政運作時，檢察長應向其他追訴機關之監督者通報。當檢察長發現其他檢察署檢察官有違反道德準則之行為，且此行為可能影響到其身為檢察官之適任性時，亦應向有管轄權之適當考核機構通報。

2-4.5 司法正義之促進

雖然檢察署及州檢察總長辦公室分屬不同機關，仍應共同促進司法正義之實現。

2-4.6 州檢察總長之協助

在州檢察總長有刑法管轄之地區，州檢察總長在地方檢察官要求下或法律規定授權下，應協助地方檢察官。當有案件涉及管轄競合而為避免不正義或法律資源無效利用時，州檢察總長經要求，得在地方檢察官間扮演居間協調之角色。

註釋

檢察官無論其地區都有尋求正義之責任。鑑於高度流動之社會和日益增進之犯罪方法，追求正義時有必須超越管轄。基於此原因及充分符合首要責任，各級檢察機關應在最大程度上相互合作。此合作可達成更有效率及更高效益之調查，避免重複追訴，並對准許豁免之結果有更全面瞭解。

隨著合作強化，檢察官知悉其他檢察官之不當行為或不適任行為之可能性增大。正如不能坐視其管轄範圍內之此種行為，檢察官亦無法忽視其他檢察官之不當行為，是本守則列出了如何因應之方針。

檢察總長未經請求之介入不能促進正向之合作關係。本守則對州檢察總長進行介入之基本建議，僅限於地方之檢察官提出請求時。乃因在美國法律執行之主要負擔仍在於地方執法機關，亦即案件之起訴和調查工作都是由地方檢察署進行的。

5. 與其他執法機關之關係

2-5.1 溝通

檢察長應積極地尋求改善與其他執法機關之溝通。檢察官在其轄區內應建立刑事訊息共享系統，並鼓勵全體調查單位共同使用。

2-5.2 案件進行狀態之建議

為了幫助執法人員履行職責，檢察長在可行情況下要讓地方執法人員能夠瞭解其所參與之案件，並提供該案件之相關信息。

2-5.3 執法之培訓

檢察長應促進相互合作，在可能情況下協助執法單位之訓練。檢察官亦應鼓勵當地執法人員參與由國家、州或地區提供之合適訓練課程。

2-5.4 訓練之檢方協助

檢察長應以定期班、討論會或研討會等方式協助執法人員之持續性訓練，使之熟悉轄區內最新之法院判決、法律修正及刑事程序規則改變等。

2-5.5 聯絡窗口

檢察長應要求轄區內各主要執法機構至少指派一名專責人員進駐檢察署，以作為其機關與檢察署間之聯絡窗口，並對其辦公室相關人員提供承辦刑事案件之進行進度及處置方式。

2-5.6 法律諮詢

雖刑事執法機構、個別執法人員非係案件之當事人或檢察署之員工，檢察官仍可對執法單位提供特定追訴之個別法律諮詢。檢察官之建議可包括刑法之正確解釋、證據是否足以支持刑事指控或逮捕、對於物證搜查及電子監控等令狀之取得，及類似之有關刑事案件調查事項等。檢察官並應致力於促進合法之調查方式，使之足以通過司法審查，亦應鼓勵執法人員盡早尋求案件調查之法律意見。檢察官在可能之情況下，亦應指定連絡窗口以接受和受理各別執法機關之法律諮詢。

註釋

維持檢察官和執法機關間之良好關係，對於刑事司法功能之順行是有必要的。雙方都有促進、維護和改善工作關係之義務，並應發展出有利於交換想法及訊息之交流方式。

刑事司法乃法律之一體系，而警方是其中之要件。此體系時有遭遇法院判決矛盾、輿論壓力、有效執法和個人權利保障平衡等之問題。警方必常面臨許多此類問題，而

為了緩和此類問題之困境，檢察官可在審前之刑事程序中教育警方，包括搜索扣押、逮捕程序、武力使用限制及詢問技巧等。特別是針對於各種證據排除規則之證據採用，檢察官有責任教育警方關於法院判決之見解及影響，及在特別案件中法院對於證據排除之具體適用。在執行此項功能時，檢察官須認知並遵循對其職責之限制，並對於包含在倫理和專業規則中之代表人或團體之通訊禁止。

檢察官對於當地執法單位之培訓及專業化具有利害關係。執法單位對於案件之處理往往與檢察官案件之成功與否有重大攸關。因此，檢察官應鼓勵當地警方盡可能的參與州、地區或國家舉辦之課程計畫。若如此之課程並不存在或無法提供給轄區內之警方時，檢察官該去促進此類課程，因為似此之訓練將導致更多成功之犯罪追訴。除了警方訓練之表面效果外，亦是人際關係建立與個別警察間溝通之絕佳機會。

檢察官應告知警方刑事調查之法律面向。該法律諮詢功能僅適用於刑事問題，不應與警察內部之法律顧問功能混淆。若此一顧問角色給予了警方人員在民事或人事業務上之諮詢，則已超出了檢察署之職責範圍。在許多案例中，似此之顧問角色將使檢察官與其負責起訴之義務職責發生利益衝突。

進一步說，檢察官係被限制於積極參與警方功能之外，若其參與已經超出顧問之範圍時，可能造成無法在民事賠償中之免責，且已非司法程序之必要部分。檢察官必須始終認知到其民事準司法免責權僅限於傳統之檢察功能行為。

檢察官與執法機關間建立健全溝通管道之責任是雙向的。對於檢察官而言，其責任在於使警方知悉案件之偵查、起訴及相關進度。為保持刑事訊息流通管道之流暢以利雙方溝通，其中一個方法是建置資訊分享系統，藉由此系統可將全部有利於推動偵查之資料及時的傳遞。

6. 與法院之關係

2.6.1 尊重法院

檢察官必須始終展現對法院及司法系統之適當尊重。

2.6.2在法庭內之尊重

檢察官須主動尋求途徑以提出適當主張，然而，該主張方式不得貶抑司法之功能。

2.6.3 不正當之影響

檢察官不得藉由與法官之私人關係對案件施以不正當之影響，且除法律或法庭另有裁示外，不得與法官私下談及繫屬案件之進行情形。

2.6.4 懷疑有刑事不法行為之處理

當檢察長合理懷疑司法體系之成員涉及刑事不法行為

時，應採取合法之偵查行動以證實或排除其懷疑。若嫌疑經證實時，應開始偵查或移轉至其他檢察署審查，或指定特別檢察官偵辦。

2.6.5 報告刑事不法行為之義務

知悉司法體系之人員有違犯司法倫理相關規定，且/或導致法官適任性之疑義時，檢察官有義務呈報其長官。若係檢察長知悉上開情事，應直接反應至其轄區內掌管司法政風之機關。

2-6.6 迴避的適用

當檢察官因事實、情況、法律或司法倫理等有合理懷疑時，可以請求法官迴避。

註釋

檢察官是法院之官員，是需要對其管轄權負責之公務人員，也是刑事司法體系之樞紐。這些面向都會影響檢察官與法院之關係。

本守則承認法官與其他刑事程序角色一樣，有著不同之專業、技能及性格。儘管有些法官個性較好，也有法官個性有著社會上常見之缺陷。因此，當檢察官需要對司法機關保持應有之尊重時，亦有責任對抗不潔身自愛法官之罕見的權力濫用。

由此來看，需要在雙方維持在一個微妙平衡上。如同

國家檢察官守則規定，有效率的司法是最重要之議題。因此，檢察官不應破壞對司法權之尊重，亦不可企圖不公正的影響法院。

當司法醜聞被揭發時，均將成為對全體司法體系之指控，並造成公眾認為所有司法人員都是腐敗的印象。檢察官須成為對抗不正義與貪腐之守護者，不可坐視刑事犯罪之不法行為。本守則認為檢察官有合理懷疑司法人員涉及刑事犯罪時，就有責任進行調查，若調查結果係起訴時，必須依適當程序進行。

本守則明確主張，檢察官在於法官涉及犯罪不法時有責任外，當法官無法完全適任其工作時亦有責任。

7. 與犯罪嫌疑人及被告之關係

2-7.1 與有委任辯護人之犯罪嫌疑人交談

檢察官應尊重犯罪嫌疑人及被告等得以請求辯護人協助之憲法上權利。檢察官亦應確保受其指揮監督人員尊重犯罪嫌疑人及被告等上揭憲法上之權利。儘管如此：

a. 尚有下述情形時，檢察官可在未有辯護人協助下與犯罪嫌疑人或被告進行交談：(1)辯護人已同意該交談或(2)該交談是經法律授權或經法院裁定或命令者。
b. 檢察官與他案中被控為被告之證人（目擊者），在未經該證人（目擊者）辯護人事先許可下，對於該證人（目擊者）之證詞，可在不涉及該案件之前提下進行交談。

2-7.2 與未選任辯護人之被告交談

當檢察官與未選任辯護人之被告交談時，須確認被告在過程中受有誠實、公正、全面地告知其可能之刑事責任。

a. 檢察官應向被告表明其身分為檢察官，並確立檢察官並不代理被告之立場；法律要求在這種情況下，檢察官應充分告知被告擁有之權利。
b. 若檢察官在與未有辯護人協助之被告進行交談中，被告改變主意並表達希望擁有辯護人協助之願望時，檢察官應立即中斷交談，以讓被告取得辯護人協助或是取得辯護人在場。在適當時候，檢察官應告知被告關於選任辯護人之程序。

2-7.3 不請自來之通信

無論被告是否受有辯護人之協助，檢察官都可能會收到、接受及利用來自於被告自發性之書面信函。若不知被告有選任辯護人之情形下，檢察官可能即會收到被告沒有事先通知之主動口頭交談，在第一時間並無義務去確認是否是有效之溝通，或被告是否有委任辯護人等。然而，若情況發生在被告已經被控訴罪刑，但要求與檢察官交談，而其辯護人並未參與之情形下，檢察官必須先確認被告是否已提出辯護人不在場之有效理由，若非如此，檢察官與被告之交談只能在法律授權或法院命令之情形下。

2-7.4 認罪協商

若檢察官與未委任辯護人之被告進入認罪協商程序時，必須先確認被告在協商程序下是否知道其權利。在可能範圍內，協商應製作書面，並給被告一份留存。檢察官不應從未委任辯護人之被告處取得不正利益。除了建議被告委任辯護人外，檢察官不應提供法律上建議予未委任辯護人之被告。

2-7.5 委任辯護人之權利

若檢察官與未委任辯護人或辯護人不在場之被告進行交談，被告改變心意想要委任辯護人或請求辯護人在場時，檢察官應終止交談，允許被告選任辯護人或聯絡辯護人到場。在適當時機，檢察官於程序中應建議被告委任辯護人。

2-7.6 在偵查程序與辯護人之協商

檢察官執行犯罪偵查任務時，對於辯護人未到場之被告或犯罪嫌疑人應避免予以恐嚇或促使進入依法律或法院命令之協商。檢察官可建議或授權執法人員與辯護人未到場之犯罪嫌疑人進行秘密協商，但必須要有法律或法院命令之授權。

註釋

檢察官與被告之關係對於檢察功能是一個敏感區域。其間必須維持衡平，讓被告可期盼選任辯護人與檢察官進行交易。亦是被告之權利可希望在車禍案件或輕微犯罪案件中，以及在某些情況下之重罪或較嚴重之輕罪中獲得辯護人之代理。

本守則認為檢察官有時可不必知會辯護人就與被告進行協商，同時也有理由可直接進行雙方之交談。譬如被告表示其辯護人係受雇於其他人，並為他人之利益，期望被告能保持緘默。如在毒品案件，有傳遞者被查獲交易大量毒品及現金，立刻有辯護人接近被告，並保釋被告，且無待被告表示即代理被告；但被告卻抱怨該辯護人實係為他人之利益而工作，然因實際上或假設性之危險存在，不敢解除辯護人之委任。同樣情形，被告可能是公司之高階主管、雇主或代表人，面臨對於個人指控及對於公司指控時，辯護人之代理公司亦等於代理個人，但此時卻可能因個人之未察覺，或未察覺到利益衝突之存在。

檢察官與已選任辯護人之被告交手時必須提高警覺，因交談中不僅有憲法之限制；並在大部分管轄區域，甚至有司法倫理之限制，且是辯護人代表之被告所不能放棄的。是檢察官只有在不尋常之情況下，才可不先告知或知會辯護人，而接觸已選任辯護人之被告。在其他情形下，檢察官則最好先向法院取得授權，或經指定「影子辯護人」後再會見被告，且應向法院報告所有作為才是妥適的。在有些管轄區域內，可能會提供其他法律管道以讓檢察官在此情況下使用；檢察官也常常接到被告主動寄來之

信件，其應有權利接收，且以合法方式加以使用。

本守則認為檢察官與未選任辯護人之被告交談時，可以肯定的是被告須受到公平對待，也應讓被告知所有作為所可能導致之後果。如被告期望轉換為證人之角色，以為政府作證換取檢察官向法院建議給予緩刑之機會時，則應讓被告知道檢察官只能提出建議（若這個案子是可以的），並無法保證如被告所要求之判決。被告即便有為國家作證之合作行為，仍有可能被判決入監服刑。若依當地法律或法律環境有「米蘭達告知」之要求，檢察官應在與被告對話前，先予以告知。本守則是假設檢察官若欲以與被告交談之內容來證明被告犯罪時，應要事先告知被告；於某些情形，檢察官只是要從被告處獲得訊息，而這些訊息並非要用來對被告不利的。但無論如何，為了確保未選任辯護人下之公平性，在被告未經事先警告或放棄權利之情形下，不應擔負對於其不利陳述之責任。

本守則知道有許多被告在未選任辯護人情形下，即想要和檢察官進行認罪協商。許多被告係因已有此程序之經驗，而不想花錢選任辯護人。於此情況下，檢察官仍須充分告知被告之權利及公平之標準。檢察官也須確認被告受到之待遇與有選任辯護人一樣，且書面之認罪協商亦因此才簽立。本守則意識到，若被告無力選任辯護人，且縱使被告一開始即表示無須辯護人代理、在場或協助時，法律仍要求必須滿足被告想得到辯護人協助之願望，是被告之願望在這方面被認為是最重要的。檢察官對於已選任辯護人之被告，在辯護人缺席時，則與被告交談之內容都要做成紀錄。

檢察官有調查犯罪活動之義務，與證人對話時，證人可能是其他不相關案件之被告或嫌疑者。一般來說，如此對話應得到該證人/被告辯護人之允許，因該證人本即要獲得辯護利益。無論情況如何，證人/被告都想要獲得其案件之辯護利益，而此對話都將牽扯到辯護之課題，且諮商也係包括在內的。於某些情形，證人或被告與案子（非選任範圍）不相關時，在沒有辯護人出席情形下，有些對話是法律所准許的。而在未起訴但具有嫌疑之臥底偵查情形中，檢察官可建議警方和嫌犯進行溝通，但此溝通必須係明確且經法律授權者。

在些許司法管轄區域內，此規則因判例及/或職業行為規範而不一致。檢察官必須謹慎從事，並避免任何因法規適用之錯誤行為，以致危害案件之結果。

8. 與辯護人之關係

2-8.1 專業標準

檢察官與辯護人之關係應遵守1-2.1之專業標準，無論先前與辯護人之關係是否帶有敵意，檢察官應維持對於辯護人都是公平、一致地對待。

2-8.2 妥適之關係

檢察官與刑事辯護律師公會（Defense Bar）成員之接觸，應努力維持妥適之關係。

2-8.3 合作以實現正義

檢察官應在刑事程序中與辯護人合作，以達到正義實現及個案妥適決定之目的。檢察官對於濫用權利、無意義或僅為擾亂、遲延之辯護要求無須配合。

2-8.4 無罪證據之開示

檢察官應在符合法律及/或倫理規範下，適時地揭露無罪或減輕刑責之證據。

2-8.5 對於犯罪行為之懷疑

當檢察官對於辯護人之犯罪行為有合理懷疑時，有義務採取行動以證實或排除此項懷疑。

2-8.6 對於違反律師倫理之報告義務

當檢察官得知辯護人有違反律師倫理之行為，致有不適任法律業務執行之情形，應向其長官報告。知悉此情形之檢察長，應直接將情形報告給對該辯護人有管轄權之律師懲戒機構。當在訴訟程序中發現此種不當行為時，檢察官亦應向主持審判之法官或其上級長官報告，並在符合法院規定下，請求適當懲處。

2-8.7 避免對所代表之客戶產生偏見

當檢察官確信辯護人有不當行為時，應針對該辯護人究責，而非其客戶。檢察官應隨時確保對於沒有參與不當行為之被告，不因其辯護人有違法或違反倫理之行為而產生偏見。

註釋

司法制度中，必須適當考量的是辯護人之專業。辯護人針對法庭上之攻防，所有討論都應坦率和公平，且不應表現出明示或暗示之敵意或不尊重。檢察官應努力與辯護人維護協商公平性，且勿對辯護人產生敵意或不良情緒，以免對該辯護人之客戶造成損害。

在任何情況下，檢察官都要有追求正義之精神，與自願提供信息之辯護人，或辯護人自願之協助、合理之請求等都可進行協力。若辯護人有辱罵、無聊或純粹延誤庭期行為時，檢察官則不須與之合作，而可請求法院裁示。無論如何，即使辯護人未顯現專業度，檢察官依法律和倫理守則規定，仍有證據開示之義務。

若檢察官懷疑辯護人參與犯罪活動時，有責任進行調查，並依最終之調查結果採取行動。

本守則規定，助理檢察官或副檢察官知悉辯護人有道德之不法行為，並將引起適任性問題時，應往上呈報。某些行為在某管轄區內，並不違反倫理規則時，助理或副檢察官不能舉報辯護人有不當行為，檢察長也才不會因之而有不當作為。且報告須及時進行，才不會損害被告之利益。

司法界有謠傳，誤以為辯護人在案件中較檢察官有更大之迴旋操作空間。此空間往往係基於必須平衡以避免讓所有資源集中在單一方面之理由。然而，在考量到對抗制之訴訟目的，及訴訟程序中已設有防衛措施等情況下，如此之理由係錯誤的。法庭並非舞台，而是討論會性質之場合；法院應維持控方與辯方間審判禮儀之一致性，避免可能對法官及陪審團造成不當影響之戲劇化表現。檢察官則應讓法官注意到其未能維持該一致性，並應維持一個為公眾服務專業人員該有之高水準行為表現。

9. 與犯罪被害人之關係

2-9.1 傳達給被害人之資訊

對於暴力犯罪、重罪或其他可能因訴訟而遭到生理上或其他形式上報復之犯罪被害人，無論是應其要求或在法律規範下，均應在可能範圍內告知其所有審判程序，並包含（但不限於）：

a. 檢察署對該案件受理或不受理之決定，控訴駁回或提起公訴。
b. 審前釋放被告之決定。
c. 任何審判前之處置。
d. 審判之日期與結果。
e. 量刑之日期與結果。
f. 除非有其他政府機關被課以告知被害人上述程序之法律義務外，檢察官認為將會或可能使被告不再受到

監禁時，包括撤回上訴、假釋、釋放或逃亡等情況。

g. 檢察官認為其他可能使被害人陷於被傷害或被騷擾之風險。

2-9.2 犯罪被害人說明會

檢察長在可能範圍且認為適當時，應為犯罪被害人提供一場審判程序說明會，並應就偵查決定及該決定之思考脈絡進行說明。在可行情況下，更應該給予虐童或家暴之被害人及家屬特別說明會。

2-9.3 被害人之援助

提供犯罪被害人之援助除係法律賦予其他政府機構之法定義務外，檢察長在可能限度內，對於犯罪被害人應制定相關之政策及程序，提供包含（但不限於）以下之服務內容：

a. 協助取回扣押以供證據使用之財產。

b. 協助申請證人旅費，及法律或規定（當地）之賠償。

c. 判決時，協助取得賠償命令。

d. 對於法院出庭之關懷及陪同。

e. 協助必要交通與住宿安排。

f. 將被害人到庭等待時間降至最低。

g. 盡可能適當地減少所有不方便。

檢察官在其管轄區內，對於有關被害人權利之立法應加以注意。

2-9.4 合作協力

檢察官須與其他執法部門協力於：

a. 與犯罪被害人支持者，一同致力於提供直接或相關服務。
b. 除非法院認為依法有必要或必須揭露者外，檢察官與其他執法部門均應致力於保護犯罪被害人之社會安全號碼、生日、地址、電話號碼、受雇地點、名字（當被害人為未成年人或性侵害之被害人時）等隱私權，或其他私人資訊。

2-9.5 設施

在可能情形下，檢察長應確保犯罪被害人有安全、舒適，並避免與被告或其朋友、家屬碰面之等待空間。

2-9.6 被害人補償計畫

檢察官應知悉在州法律下之犯罪被害人補償標準，並告知被害人可能之補償請求權，及其轄區內被害人補償計畫之必要條件。

2-9.7 被害人援助計畫

檢察長應在可行限度內，在其行政組織架構下發展及維持犯罪被害人援助計畫，並給予被害人提供服務及援助。

2-9.8 被害人保護

檢察官應留心因犯罪被害人與執法機關之合作，致造成被害人被恐嚇、傷害之可能性。檢察官應清楚其轄區內，可供保護目擊證人之計畫，並應適當的對計畫參與者提供參考及建議。

10. 與證人之關係

2-10.1 證人之告知義務

檢察官應告知目擊者下列事項：

a. 審前聆訊，證人都可能被要求參加。

b. 審判日期與證人出庭之時間表。

2-10.2 證人與辯護人之接觸

檢察官不應建議證人（包括被害人）拒絕與辯護人接觸或提供訊息。檢察官應建議，證人於法庭外並無義務提供訊息予辯方。檢察官亦可告知對於提供信息予辯方之意義及可能之後果。

2-10.3 有法律代表之證人

當檢察官被通知，證人因刑事訴訟規定，獲得法律之代表人時；檢察官應依照程序規定，透過證人律師安排所

有與證人在法庭外之接觸。

2-10.4 證人之面談與準備

檢察官不得建議或協助證人為虛偽陳述。檢察官可與證人討論證詞之內容、風格、態度等，但無論如何都應讓證人知道據實陳述之義務。

2-10.5 專家證人

當檢察官決定專家證人之證詞是必要時，專家證人之獨立性應得到尊重，且支付給專家證人之費用應當合理，不應依案件結果之不確定性而有所不同。

2-10.6 證人援助

提供證人援助除係法律賦予其他政府機構之法定義務外，檢察長在可能限度內，對於證人應制定相關政策及程序，以提供（包含但不限於）以下服務：

a. 協助申請證人費，及依照法律或地方法規給予適當之補償。
b. 經被告要求出庭時之人員協助。
c. 適當的協助必要之交通和住宿安排。
d. 協助儘量減少證人出庭等待之時間。
e. 盡可能且適當地協助減少所有不便。

2-10.7 證人之保護

檢察官應注意證人因協助執法而遭受威脅或傷害之可能性。檢察官應知悉其轄區內有關保護證人之計畫，且適當的提供計畫參與者指示及建議。

2-10.8 設施

在可能情形下，檢察長應確保證人有安全、舒適，並避免與被告或其朋友、家屬碰面之等待空間。

2-10.9 對證人施加犯罪之執法

檢察官與協力之執法單位應優先致力於對於證人之威脅、騷擾、強制或報復之調查工作，包含任何對證人家人或朋友之恐嚇行為。

2-10.10 證人協助之計畫

檢察長應在可行最大限度內，於其行政組織架構下發展及維持證人援助計畫，並提供證人服務及援助。

註釋

有效控訴包含完全清楚犯罪被害人及證人在刑事司法體系內之價值。必須被害人個人提出犯罪之控訴及接續之指認、陳述與作證，乃其自己的證明。無論如何，本守則

確定檢察官有促進其與被害人、證人等關係之義務。

犯罪被害人及證人都需知道刑事案件之發展。證人需要被安排以利作證，而被害人應更注意被告釋放之決定，以顧慮其自身安全及家人之安全。

檢察官不應假設犯罪被害人或證人熟悉專有名詞、程序，甚至是法院位置，至少應有此敏感度。理想上，亦應有正式之被害人及證人說明會計畫。

此說明會計畫係將提供之許多服務之一。檢察官對於犯罪被害人/證人之援助計畫，應立於發展與維護之主導地位。本守則建議援助之方式應該是可行的，如：人員介入及減少不便等。

援助計畫外，本守則要求提供適當設施以照顧犯罪被害人和證人。其等必須避免與被告或被告親友間有接觸之可能。

作為與犯罪被害人或證人間之角色，檢察官並非被害人或證人所需資源之唯一提供者。此類需求應係合作之工作，例如被害人、證人等極易遭受到威脅、騷擾和恐嚇，故其等最大需求即是安全保障。被害人、證人之保護係執法機關之主要功能。而檢方必須與警方合作以減少此類威脅等，故本質上即是一項相互合作之工作。

11. 以社區為基礎之計畫

2-11.1 計畫之認知

檢察官須認知與熟悉以社區為基礎之計畫，以提供被

判刑者、緩刑者等罪犯處遇之模式。

2-11.2 計畫之必要性

在某管轄區之社區機構提供就業教育，家庭輔導和物質濫用之輔導服務，但有些社區機構則不提供；檢察長應鼓勵社區提供此類服務。檢察署則可作為此類機構之公共資訊來源。

2-11.3 通知

檢察署應採取步驟以確保其與相關之執法機構，在於其轄區內參與工作計畫之人將被釋放時，都能獲得通知。

12. 監獄

2-12.1 設施之認知

檢察官應熟悉轄區內之矯正機構。在可能範圍內，檢察長應設法使新進檢察官培訓時，有機會參觀其管轄區內之矯正機構。

2-12.2 矯正機構改善計畫

檢察長應與監所官員及立法機構一起改善矯正機構，包括避免監獄超收人犯等。至於新建或翻新舊有設施以增

加設施、改良監所管理人員教育訓練、擴展人犯現有課程及教育、加強行為方面教化等項之改進則係首要目標。

2-12.3 檢察資源

檢察署應做為監所及其容量規劃之資訊來源。

2-12.4 職業罪犯之識別

檢察署應協助建立累犯或職業罪犯之識別系統。

2-12.5 合適之量刑

檢察署應與矯正機關合作以落實刑度之執行。

2-12.6 革新之改進

檢察長應支持改善刑罰體系之革新計畫，並確保這些計畫不會對公平正義與適當罪責產生不利影響。

2-12.7 通知

檢察長應採取措施，以確保管束人犯之機構發生脫逃事件時、暫時或最終釋放前、假釋考量前，都會通知檢察官與執法機關。

2-12.8 矯正諮詢委員會

在可行範圍內，檢察長應促使建立並積極參與以州為單位之矯正諮詢委員會，該委員會之成員則由刑事司法體系與政府之重要成員組成。

13. 假釋與提前釋放

2-13.1 檢方係資訊來源

在法律允許範圍內，檢察署應成為假釋委員會、矯正部門或其他監管機構獲得訊息之來源，以供考量或監控羈押中人犯之釋放。

2-13.2 資訊系統

當檢察長認為妥當時，應建立並維護檢察署之資訊系統，以確保其轄區內或預計居住於其轄區內之人的假釋決定都會通知其檢察署。

2-13.3 假釋委員會和釋放裁量權

檢察長應認知到假釋委員會與其他授權機構經法律賦予了釋放裁量權，能夠做出釋放之決定；檢察長則應對於裁量權之濫用情形發表聲明。

2-13.4 出席之權利

檢察長出席假釋、赦免、減刑、行政赦免等聽證會，或被允許以其他方式提供訊息予聽證會時，應主張其和被告都能提前獲得通知。檢察官並應致力於其轄區內之犯罪被害人及執法機構獲得如此之訊息通知。

2-13.5 提前釋放

受刑人之提前釋放係基於矯正機構設施過度擁擠時，檢察長應予以反對，除非此項釋放決定是由法院之授權命令者。

2-13.6 釋放通知

檢察官應讓其辦公室、執法機關、及被害人能夠獲得釋放之通知。此包括了其轄區內之監獄人犯，或其轄區外但有計畫移居於其轄區內之監獄人犯。此監禁釋放包括了因假釋、赦免、減刑、行政赦免、易服勞役，或法院下令從監獄釋放到精神病院者。

2-13.7 性侵害之危險人物

檢察官發現受刑人具有性侵害之危險，且刑期已過時，可聲請法院之民事約束或繼續拘留。檢察官並應採取措施，以確保監獄和假釋委員會提早通知檢察署此類人犯

即將釋放之日期，並使聲請程序能夠及時進行。

註釋

可確認的是以社區為基礎之處遇計畫，對傳統矯正機構內之輕刑犯顯示了可行之替代方案。此外，近年推動以社區處遇作為監禁之替代概念亦有進展。社區處遇之觀護人則被要求必須與檢察官進行合作及溝通。檢察官對於處遇機構之投入程度應如同自行執行計畫一般。基本上，檢察官須知道其轄區內，被告可能被執行之社區處遇機構、緩刑或轉介計畫。此外，為使此類替代計畫能成為有效之資源，檢察官須提供觀護人有關之資訊。

有些檢察官選擇在社區處遇執行上扮演積極角色。近年來，在檢察署主持下發展及實現之計畫有了較大之規模。處遇及志願計畫都是檢察官投入之範例。此外，檢察官在地方、社區、州等地方積極發展此類計畫。基本之社區服務，如職業、成人教育、家庭諮詢等，但藥物濫用諮詢則不提供或並不適當的，檢察官應考慮計畫之發展或升級。檢察官係當地主要之法律執行官員，應多關注此類計畫及諮詢委員會。

檢察官必須介入監禁或相關規劃是可以確認的；最低程度，亦必須知道轄區內被告經判刑後將被監禁處所之設施及提供之功能。如同緩刑及社區處遇機構一樣，檢察官對於個案之背景知識等都應被當作該地區相關機構之資訊來源。矯正系統可能僅努力於精心設計收納人犯之計畫，而未利用事先已獲告知之人犯背景資訊。於此情形下，檢察官必須成為有用之資源來源，負責提供基本資訊及證實

由其他管道獲得之資訊。

基於檢察官之角色地位，亦基於在刑事司法體系居於領導之地位；檢察官對監獄體系之關心自可由其他領域獲益。一般而言，美國矯正制度需要提升，檢察官應致力於使監獄設施有更佳之設備服務，及訓練有素之人員。監獄之人犯超收已成為整個刑事司法體系之問題，自會期盼檢察官能夠說服立法單位，以爭取建立新的設施並擴大現有設施。檢察官能夠有效提升設備及提供背景資訊能力，均有賴對其轄區內矯正機構之充分瞭解。因此檢察官對於矯正機構之現況必須充分掌握。

基本上，檢察官得協助鑑別人犯是否係累犯，亦應與監獄體系合作以確保判決之得以執行，並應鼓勵及支持對於判決執行所做之實驗性努力。對於特定犯罪之累犯採取強制性監獄服刑之觀念，應受到嚴格檢驗。

如同在此討論之因素，檢察官應積極促成彼此間之互助。檢察官必須被考慮成為假釋委員會及監督人員之資源。此外，檢察官應獲得人犯已被許可釋放，及人犯即將在其轄區內居住之相關資訊。另檢察官之基本保護功能，在於受刑人之准予假釋決定若非係有利於社會時，檢察官應有反對之機會。

積極推動提早假釋計畫以緩解人犯超收之問題，是在預算限縮下所出現之現象。此計畫乃因監禁所生之訴訟，及監禁狀況遭到抨擊時所做出之回應；此類訴訟在1980年代至1990年代激增。然而監獄之狀況並非得作為受刑人提早准予假釋之適當原因，本守則即反對如此主張。解決監獄人犯超收及相關問題之方法均仰賴於立法機關，而非僅

係簡單地釋放受刑人。檢察官對於應另分配額外之公共預算，以建設及維護必需設施之立法建議應給予支持。相同的，檢察官對於因應矯正設施現今問題所提出之提早假釋計畫，均應予以反對。不妥適之假釋制度將侵害刑事司法體系改善所獲得之進展。

經檢察官起訴涉犯性侵害犯罪之危險犯假釋時，監獄應有相關流程以確保假釋前，檢察官有足夠時間於釋放前即準備好戒治聲請書。

14. 檢察官與媒體

2-14.1 媒體關係

與媒體間維持適當及專業之關係在促進公共信賴及增加透明度上是必需的；故檢察官應與媒體維持適當關係，以與社會大眾有訊息適切互通之管道。

2-14.2 利益平衡

檢察官不僅應維護被告人權，亦應維護人民對於犯罪造成公眾危險及政府因應作為等問題之知的權利。依據檢察官守則2-14.4條及相關倫理守則規定，若訊息公開有助法律執行、提升公眾安全、驅散人民疑慮、或增強司法信心時，檢察官得釋出案件之偵查訊息。檢察官並應避免在被告判決前，對個案做出司法程序外之評論。

2-14.3 檢察官得對媒體釋放之訊息

在被告判決前，檢察官得就以下事項發表評論：

a. 被告之姓名、年齡、住居地、職業、家庭狀況、國籍。
b. 檢察官起訴之資料，包括移送書、起訴書之資訊、若妥適時對於告訴人之描述。
c. 有相當理由可信被告涉犯起訴之罪。
d. 調查及逮捕機關、調查期間、調查範圍、調查程序及執法人員之努力查獲人犯及逮捕等。
e. 逮捕情形（包括逮捕機關、逮捕依據、逮捕時間、逮捕地點、逮捕時被告有無反抗、逮捕機關是否使用武器等）。
f. 已公開之資訊，而其公開有利於公眾利益者。

2-14.4 資訊公開之限制

刑事判決前，若資訊公開、法庭外說明可能在訴訟程序中造成偏見，檢察官即不應為資訊之公開或法庭外說明。特別於刑事調查開始後，直到審判結束前，檢察官不應有關於下列事項之公開及法庭外聲明，除非該訊息係屬刑事訴訟之公共紀錄：

a. 性格、聲譽，或犯罪嫌疑人、被告、證人等之先前犯罪紀錄。
b. 被告或犯罪嫌疑人之自白、口供、陳述或不在場證明等之內容。

c. 科學測試之表現結果，或嫌疑人、被告是否曾拒絕或參加測試。
d. 證人之信譽或其可能作證之證詞。
e. 認罪協商或獲得較輕罪行之可能性，或任何認罪協商內容。

2-14.5 公開回應

檢察官可對辯護人或他人之意見作合理及公正之答覆。根據本款檢察官作出公開說明，僅限於消弭因公共評論所造成之偏見，且以合理必要者為限。在任何情況下，檢察官都禁止作出違反前開2-14.4或司法倫理之規定。

2-14.6 執法機關之資訊公開政策

檢察官應協助執法或調查機關明瞭資訊發布之法定責任。檢察官也應協助轄區內執法機關之訓練，以避免與媒體討論及尚在進行中之調查或偵查。

2-14.7 司法判決

檢察官對於判決違反法律、事實或公共利益時，可予公告周知；但檢察官不應發表公開聲明指摘法官之正直或適格性。

2-14.8 宣判

檢察官不應在陪審團作出判決後，作出任何公開批評陪審員之言論，僅可表達對陪審團裁判之不同意或失望。

註釋

檢察署運作之基本要求，在於建立公眾對於檢察官代表公眾追求正義能力之信任。為了維護公眾之信任，檢察官之行為必須是可被依賴的。至於是否足以依賴之檢驗，媒體則扮演了重要角色。

媒體報導有關犯罪調查及訴追、法庭活動進行等；包括了執法人員之調查表現、檢察官之偵查、法庭活動表現及法庭活動之結果。

檢察官扮演著獨特的代表公眾以追求正義之角色，而透過媒體之散佈，將未經司法程序檢驗及證實之資訊，帶進未存有偏見、公正之陪審團，將減少被告受公平審判之權利，造成被告之不公平。

同時，檢察官身為人民代表並肩負確保正義實現之重責，必須被允許提供足夠資訊予公眾，以確保社會治安之維持及刑事正義體系之合宜運作，而維持如此平衡則係本守則背後目的。

檢察官應主動積極的對轄區內執法人員進行公開發言之訓練，藉由此進階訓練，檢察官可減少執法人員違法發言之可能性，由此檢察官亦可減少被告是否受到公平審判之爭議。

檢察官對於司法判決內容及範圍之意見，是最重要之訴訟倫理規範。至少檢察官不可故意、或疏失地指摘法官及陪審團之公正性或適任性。抑有進者，檢察官不可進行影響陪審員未來陪審團活動之行為。

15. 與經費提供機構之關係

2-15.1 評估需求

檢察長應與其經費提供機關充分配合，並提供檢察署足以有效運作之需求評估報告。

2-15.2 獨立收入來源

檢察工作之預算應獨立，不得與罰金、沒收、規費等執法或刑事司法活動之收入相關。檢察官只有依據法令或法院命令，始得由扣押資產中擴充其預算。

註釋

本守則之基礎前提在於應有適當之預算。整體而言，若無適當之預算，少有體系能運作，檢察機關亦然。

經費提供機關向來認為執法預算可來自罰金與沒收之收入，但就後者而言，係因近來依據州或聯邦沒收法等規定，而有預算收入可能增加之誤解。從來如此之賠償並不作為主要預算之收入來源，因此認為此類收入可供司法機關預算來源之說法，乃是一種全然之誤解。至多此類收入

可提供一些預算予執法機關，但僅是制度上之附隨利益，非其主要目的。因此類預算收入無法預測，故預算提供機關在考量檢察官之預算需求時，若欲依賴此類收入乃是錯上加錯之想法。

16. 公共關係

2-16.1 社區組織

檢察官對有興趣於刑事司法、犯罪預防、犯罪處罰、及犯罪矯正等之社區組織建立與成長均應予以鼓勵。

2-16.2 聯絡窗口

基於對上揭組織之尊重，且若檢察署有足夠資源時，檢察長應指定適當之機關人員作為與上述社區組織間之聯絡人，並作為檢察署在上述組織就公益事務之發言及出席代表。

2-16.3 公共教育

檢察長應利用所有可能資源，鼓勵公民對於執法、檢察業務與相關議題之加以支持。檢察長並應教育公眾關於其業務之有關計畫、政策及目標，並引起公眾關注上開計畫、政策目標及可獲得之利益。

2-16.4 諮詢性角色

檢察官有行使裁量權及作出最終決定之責任，而公共利益與公民團體之角色應被認知僅為諮詢性質。

註釋

檢察官之工作與社區內犯罪密切關聯，對於現有社區之犯罪預防計畫，檢察官可經由個人或檢察署支持，以對於犯罪預防做出明顯貢獻。此外，檢察官亦可在犯罪學者、都市計畫者或其他類似人員對於社區之成長與發展進行規劃時給予專業意見；以使社區之成長與發展計畫更適於阻止犯罪活動。本守則提供檢察官在社區刑事預防計畫中履行其角色之指引，亦認為檢察官不僅要與社區之犯罪預防團體及社會服務團體互動，同時也要在公民團體之形成過程中提供助力。

17. 與非政府組織之關係

2-17.1 通論

在涉及非政府組織之事務時，檢察長應將公共利益置於最優先之考量。

2-17.2 財政與資源協助

a. 在法律允許範圍內，檢察署經檢察長核准後，得接受非政府組織之財政或資源協助。
b. 當檢察長決定是否接受非政府組織協助時，應將公共利益考量優先於該組織利益之考量，尤其在與特定案件有關，而非與檢察署之通盤運作有關時。
c. 檢察長應考量接受非政府組織協助後，是否將產生不適當影響。
d. 檢察長應在檢察署內設審核程序，保障檢察署之獨立行使裁量權，並避免於調查或起訴特定個案或特定種類個案時，非政府組織提供之協助將產生不適當之影響。此程序應包含對於所有援助（無論財物或資源援助）之嚴格簿記與會計要求；此外若法律另有規定者，並應包含公開程序。

註釋

當機關預算相當缺乏或資源配置不當時，非政府組織提供之資源協助係一種誘惑。此類安排須經謹慎檢視，以確保並無任何非法或不符倫理規範之聯結附加。若檢察官決定接受資源協助，有必要持續監督此類提供之資金或設備。此外，檢察官必須對此類資源協助相當警惕，不可讓此援助影響到獨立檢察裁量權之行使。

第三部分　偵查

1. 偵查通則
2. 令狀審查
3. 大陪審團調查
4. 豁免權之准許（Grant of Immunity）

1. 偵查通則

3-1.1 偵查權限

檢察官於轄區內有啟動犯罪偵查程序之裁量權，該權限之行使取決於許多因素，包含（但不限於）可動用之資源、執法機關調查能量、檢察機關業務優先順序，及可能產生之民事責任等。

3-1.2 偵查程序之公平性

基於（無論是全部或部分）被害人或犯罪者之種族、血緣、宗教、性別傾向或政治傾向等因素，而開啟或持續之犯罪偵查不應被准許；除非上揭因素乃是特定犯罪之構成要件或與犯罪者之動機有關。犯罪偵查亦不應基於（無論是全部或部分）政黨壓力、專業野心或不適當之個人考量因素。

3-1.3 檢察官對於證據之責任

檢察官對於將被用於刑事案件之證據有最終責任，當

檢察官發現或察覺偵查程序有以不適當方式進行、或證據有透過執法機關非法取得之實質危險時，應採取積極方式調查並修復此類問題。

3-1.4 證據之非法取得

檢察官不得有意的以非法方式取得證據，亦不得指示或鼓勵他人透過非法方式取得證據。

3-1.5 臥底偵查

理論上，檢察官不應有虛偽陳述或欺騙行為，但在法律允許範圍內，仍得進行或指揮上揭方式之偵查程序。檢察官應利用所有合理手段以確保該等偵查程序，不致對於無辜者造成非必要之損害、造成對法院之詐騙、或受憲法保障之被告辯護權、公平審判權等受到影響。本守則並未排除檢察官對於司法機關、法院，或辯護人適時進行調查之權限。

3-1.6 檢察之調查者

檢察長應任命經過合格訓練之調查者協助案件之準備、調查程序補遺、初始調查程序，及由檢察官指定之其他任務。檢察長應在預算中分配合適之調查資源。

註釋

雖執法機關承擔龐大之犯罪調查工作，然檢察官有時也須自行啟動偵查或繼續調查。譬如：由執法機關進行調查會有利害衝突、調查不當而有重行調查必要、調查需要檢察署專業、執法機關調查資源不足等。

為人民尋求正義乃檢察官被賦予之天職，此為關於偵查之至理名言。檢察官不得因被害人或犯罪嫌疑人等與犯罪無關之特徵或動機而啟動偵查。檢察官與受其指揮之人員均不得進行非法或不當之調查。

臥底偵查有時乃獲取犯罪證據之唯一有效管道。因臥底偵查之重要性，檢察官並不被排除於進行此項調查行為，但仍應盡力控制此種調查行為，並包括對倫理規範之釐清與修訂。

為避免不必要及重複之調查，所有具有調查權限之政府機關，包括地方執法機關或其他相關機關，應隨時將正在進行之調查活動告知轄區內之檢察機關。

2. 令狀審查

3-2.1 搜索令狀與逮捕令狀之審查

執法機關向法院申請搜索、逮捕令狀前，應由檢察署進行先前法律審查。

3-2.2 通訊監察令狀之審核

檢察署應審核其轄區域內所有執法機關之通訊監察。

3-2.3 執法人員之訓練

檢察機關應對轄區內執法機關人員，提供關於搜索、逮捕令狀等聲請、執行之法律訓練。

註釋

無論數量或本質上需要，搜索、逮捕及通訊監察令狀之核發都要能經得起聲請門檻及其他法律之挑戰，因此檢察官對於執法機關提供法律上之協助即有其必要性。本守則建議在可行範圍內，應由檢察官審查令狀及其聲請程序。如此審查也可加強法院做出有罪判決之可能性。

除了審查程序外，檢察官對於執法人員執法技巧之訓練，及建立標準程序均有助於執法機關在聲請令狀時，可以有效對抗辯方之挑戰。

3. 大陪審團調查

3-3.1 大陪審團調查之範圍

除法律有特別准許外，檢察官不得就下列事項使用大陪審團調查：

a. 僅針對非犯罪事項之協助。
b. 僅為對已被起訴之被告，取得審判中之證據。

3-3.2 證人之辯護人

若司法轄區內，規定大陪審團調查之證人不允許辯護人陪同到庭，僅得在程序外諮詢律師時；檢察官應在訊問程序中同意證人諮詢律師之合理請求。至於是否同意諮詢之決定權在於大陪審團者，檢察官應對大陪審團建議，證人應有諮詢律師之合理機會。

3-3.3 傳訊受調查對象

若司法轄區內，作為調查之對象可被傳訊至大陪審團作證者，下列程序應被適用：

a. 檢察長或其指定之人員對於為使被調查者在大陪審團前作證之一切努力應予准許。
b. 被調查者至大陪審團作證前，應先予以書面告知，使之明瞭其地位及可獲得法律諮詢之權利。
c. 大陪審團調查時，為避免出庭有不公平現象發生，檢察官應做出合理努力以使被調查者志願出庭作證，而非透過傳訊方式。
d. 大陪審團調查時，被調查者在出庭作證之初，應即被告知本守則3-3.4條所規定之權利。

3-3.4 大陪審團調查時之告知義務

大陪審團調查程序中，不論該證人是偵查中被告（target）或與犯罪相關連者（subject），詢問證人之初，檢察官都應告知證人以下事項：

a. 若對於問題之真實陳述將會導致自身遭刑事追訴時，證人得拒絕回答。
b. 證人之陳述，可能在大陪審團程序或以後之法律程序中作為對該證人不利之使用。
c. 若有委任辯護人，在回答問題前，大陪審團會賦予證人合理諮詢辯護人之機會。

此告知應以書面記載，且檢察官亦應確認證人完全瞭解告知之內容。

3-3.5 向大陪審團提出之證據

除法律另有規定或該轄區之司法倫理要求，向大陪審團提交之證據都必應遵守下列規定：

a. 按照法律或司法倫理要求，檢察官應開示知悉且可信為無罪之證據或資訊，或合理可信應係無罪判決之證據。
b. 檢察官若明知證據係司法機關違法取得者，不應提交予大陪審團。
c. 缺乏有效之權利拋棄聲明（valid waiver）時，檢察官明知或確信有受律師保密義務保護之訊息，不應向證人探詢。

d. 檢察官不應有不當影響證人在大陪審團前作證之行為。

e. 若檢察官深信證人在大陪審團前，將主張憲法修正案第5條（Fifth Amendment）不自證己罪之拒絕證言權時，檢察官不應使證人出庭，除非檢察官想要挑戰證人拒絕證言權之主張或想要尋求豁免許可（grant of immunity）。但得通知大陪審團關於證人不出席之原因。

f. 檢察官應告知大陪審團有親自聽取證人證言或傳訊有關資料等之權力。

g. 檢察官不得故意對大陪審團提出明知為不實之證據。

h. 檢察官不得故意對大陪審團就事實或法律意見為虛偽陳述。

3-3.6 作證義務

除司法轄區內之法律另有規定外，調查對象（target of investigation）要求在大陪審團調查中出庭作證，而無下列情形時，檢察官應准其要求：

a. 將不當加重或延滯大陪審團程序。

b. 顯將提供與偵查無關之資訊。

c. 將不符合偵查不公開之要求。

d. 出於不正當之目的。

准予作證前，調查對象應以書面方式，放棄其憲法修正案第五條之不自證己罪之拒絕證言權（Fifth Amendment privilege against self incrimination）。

3-3.7 大陪審團程序中之傳喚（Grand Jury Subpoenas）

檢察官應積極探求與犯罪調查有關之資訊，合理地減少對於第三方證人（third party witness）調查之負擔。檢察官應本於誠信原則，對於傳訊證人將造成不當負擔時，即應就傳訊範圍予以限制或修正。

3-3.8 終止調查對象（target）身分之狀態

當某人被通知或被認定係大陪審團調查之對象，但檢察官決定不予起訴或大陪審團宣告不予起訴（fail to return a True bill），又無其他需要調查之事項時，除有礙於刑事法律之有效執行外，檢察官應告知不再是被調查對象之身分。

註釋

某轄區內，就犯罪行為之調查、起訴係適用大陪審團程序，該區域之法律及判例等應有關於大陪審團、檢察官、執法機關及證人程序等規定之細節。

據此，本守則對於大陪審團之調查程序，鼓勵檢察官應秉持著公正、客觀態度指導大陪審團調查程序進行。而為了使刑事司法制度之可行，多數人須信任此制度是公平且有效率的。藉由允許證人可諮詢律師、調查對象身分之通知、證詞運用之警告及允許調查對象作證等規定，讓檢察官得以藉此主張上揭規定係追求正義之利器。

4. 豁免權之准許（Grant of Immunity）

3-4.1 通則

未經事前取得檢察長或其代理人同意，檢察官不得准許證人之豁免權，且此項同意必須經過深思熟慮，並以公眾利益為依歸。豁免權之准許必須以書面為之，且須具體指明適用之範圍及性質。

3-4.2 授予或聲請豁免權—公共利益

在檢察官考慮是否准許證人豁免權或為證人聲請豁免權時，應考量下列因素：

a. 准許豁免權後，可自證人處取得真實資訊之可能性。
b. 證人之證詞或資訊對於偵查與起訴之價值。
c. 證人在大陪審團或審判中陪審團（Trial jury）前作證，其可信性之影響。
d. 在有強制令（compulsion order）情況下，證人及時完全配合之可能性，及不配合時對證人使用懲罰之效率性。
e. 證人與偵查、起訴犯罪行為之關聯性，及其犯罪歷史。
f. 在強迫證人作證前，對證人成功起訴之可能性。
g. 證人依強制令作證後，未來遭受身體傷害之可能性。

3-4.3 准許豁免權後之偵查

偵查中獲得豁免權之證人須經過檢察長或其代理人同意。檢察機關應採取必要措施，以確保未來若決定追訴具豁免權之證人時，不至於違反檢察官所為之承諾。

3-4.4 為被告利益准予豁免權以取得證詞

除法律另有規定外，檢察官不負有為被告利益而尋求或准許豁免權以取得證詞之義務。檢察官只有在確信合於公平正義之情況下，才有如此必要。

註釋

偵查案件常有超過一人實施或參與犯罪行為，而取得犯罪行為者之合作與證詞，對於成功追訴主要之犯罪者甚有裨益。在此種情況下，當某人之證詞具有必要性，但卻無法說服其合作時，即有賴准許豁免權之制度。

因豁免權准許後，將產生嚴重之後果，故只有直接對人民負責之檢察長，具有准許豁免權之權力。再次強調的是，考量要維持大眾對於刑事司法制度之信賴，檢察長在行使准許豁免權之裁量前，須仔細審酌前揭考量因素。

第四部分　進入審判前之注意事項

1. 篩選
2. 起訴
3. 分流處分
4. 審前釋放
5. 首次聽證程序
6. 預審程序
7. 沒收
8. 大陪審團之追訴功能
9. 開示
10. 案件調配與優先性
11. 少年司法

1. 篩選

4-1.1 檢察職責

開始犯罪偵查之決定須由檢察機關做成。有些州法准許由執法部門、或其他之人及方法開始犯罪之追訴，但檢察官須在第一時間內決定是否追究該罪責。

4-1.2 檢察官之裁量權

檢察長必須認知且強調開始追訴決定之重要性，並提供檢察官關於行使此裁量權之訓練及指導。

4-1.3 考量因素

檢察官須篩選可能之追訴案件，以自司法體系中去除不符正義或公益之訴訟。篩選之考量因素包括：

a. 被告有罪之懷疑。
b. 足夠支持有罪之合法證據（admissible evidence）。
c. 刑事訴追對被害人之負面影響。
d. 適當民事救濟手段之可利用性。
e. 適當分流處分（diversion）與更生計畫（rehabilitative programs）之可行性。
f. 損害賠償之規定。
g. 由其他司法機關為刑事追訴之可能性。
h. 不予起訴之決定是否可達成其他正當之目的，譬如嚴重罪行之調查或追訴。
i. 對類似情形所做出之起訴決定。
j. 被告之態度與精神狀態。
k. 因刑事追訴致被告產生過度痛苦。
l. 適用法律之未執行紀錄。
m. 執法部門未盡應盡之調查義務。
n. 在得到法律咨詢後，被告明確表示自願放棄對被害人、證人、執法人員、或檢察官等提起民事訴訟之可能。
o. 是否被指訴之犯罪代表被告已背離守法之生活。
p. 是否被告已因被指訴之犯罪而遭受顯著損失。
q. 是否被指控犯罪所造成損失或傷害過於輕微，致不足為刑事制裁。

4-1.4 不考慮之因素

在為篩選決定（screening decision）時，不應考慮因素如下：

a. 檢察官個人或檢察機關之定罪率。
b. 起訴可為檢察官或檢察機關人員帶來之個人利益或不利益。
c. 起訴可帶給檢察官政治上之利益或不利益。
d. 被告具有令人反感之負面歧視特質，但此特質與犯罪構成要件或動機並無關連。
e. 在4-7.4規定所述範圍內，資產沒收所可能產生之影響。

4-1.5 資訊分享

檢察官應盡力蒐集有助於正確為上揭決定之相關資訊。檢察署應致力於與其他政府機關、執法機構間之協力合作，以獲取相關資訊。

4-1.6 持續評估義務

檢察官因先前不確定資訊，致影響上揭篩選之決定時，則有必要依照新資訊重新予以評估。

4-1.7 不予起訴之記錄

在法律允許下，檢察署應保留不予起訴理由之紀錄。

4-1.8 對不起訴之解釋

檢察官對於利害關係人提出不起訴決定之質疑，應立即回應。

註釋

檢察官為追求正義而行使裁量權中，篩選判定（screen decision）可謂是最為重要的。篩選判定將決定案件是否進入刑事訴訟程序。雖篩選判定大體上不難決斷，然而有時卻因需要審視檢察官對於刑事司法之信念、訴訟目標，及其他眾多因素。在本守則之標準下提供了做決定時應或不應納入考量之因素。檢察官應仔細分辨上開因素，是否有在其轄區內並不適用者。

2. 提起公訴

4-2.1 檢察官之職責

檢察機關最基本之責任係決定要起訴犯什麼罪，以及起訴對象為何？

4-2.2 適切起訴

檢察官須在確信犯罪合致於構成要件時始提起公訴，並要有合理的確信如此起訴，在法院審理時將因有足夠之合法證據（admissible evidence）而被維持。

4-2.3 不適當之影響

檢察官不應以獲得被告放棄民事請求為唯一目的，而提起公訴。

4-2.4 考量之因素

檢察官提起公訴應以公平正義為依歸，以下為影響起訴與否之考量因素：

a. 犯罪之本質，包括該犯罪是否使用暴力或傷害人之身體。
b. 定罪之可能性。
c. 被告所具有與其犯行相關之特性，包括其犯罪前科。
d. 起訴對於被告及社會大眾帶來之預防效果。
e. 若無法使被告定罪所帶給社會之觀感。
f. 被告配合執法機關之意願。
g. 被告於犯罪行為中可責程度之高低。
h. 被害人之情況，包括被害人年紀或特殊弱勢。
i. 被告犯罪當時是否利用權勢。
j. 犯罪嚴重性與犯罪追訴成本間之比例原則。

k. 相關執法人員之建議。

l. 犯罪對社會所造成傷害。

m. 其他加重或減輕之情形。

註釋

隨著篩選判定（screening decision）之作成開啟了訴訟程序，起訴決定（charging decision）則是檢察官獨有之權限與責任。起訴與否牽涉到下列議題：

1. 對於被告犯行當以何罪名起訴。
2. 如何起訴最能符合正義及公益。

作成起訴決定時，檢察官應謹記當下其所行使之權力將深遠且整體地影響被告、被告家人、被害人及被害人家人之生活，及整個社會。起訴決定之重要性並不表示檢察官作成決定時應該要怯弱膽小，而是要依照專業判斷，智慧地作出決定。

常有「在起訴時還不知特定資訊，該資訊卻會影響到未來作為」之情形發生。縱使在起訴前應盡可能的蒐集所有資訊，但卻也是不切實際之期待。檢察官在決定是否擁有足夠資訊得以起訴時，仍須在「資訊蒐集」和「大眾安全利益」之重要性取得平衡。

雖依一般道德標準，開始偵查程序只要具相當理由（probable casue）可確認犯罪發生，及被告係犯罪行為人之要件即可，惟提起公訴則必須採取更高之標準。

建議提起公訴之門檻，應是檢察官合理相信審判中有足夠合法證據（admissible evidence）以支持起訴，此標準亦即表彰開始刑事訴訟之強力效果。鑑於檢察官有追求正

義之責任，因此保護所有人（甚至是偵查中被告）之權利是必要的。

檢察官決定起訴與否所使用之判斷標準及方法，與作成篩選判定（screeing decision）所運用機制乃密切關聯。實際上，此兩種功能可在個人或是機關部門中適切結合。

分流處分（diversion）必須經檢察官之裁量決定。而不論是決定起訴或為分流處分，檢察官都不應屈服於外在壓力。除選擇繼續偵查外，分流處分（diversion）可在刑事程序中之任何階段為之。在正式起訴後仍得為分流處分，乃因在正式起訴後，被告面臨刑事追訴之威脅性更大，因此被告較可能積極參與分流處分，而使被害人得到比較有利之結果。

有關起訴與否之初步門檻或準則，僅可由檢察長確立。在一人辦公室內，檢察長就如同實施這些準則之承辦人員。然在較大之辦公室，無論是指派個人承擔起訴，或針對輕微犯罪成立小組以處理收案程序將較為方便。而被選派之個人或成立之小組都應承擔起訴與否之初步決定，再送經檢察長審核及准許。

檢察長應建立起訴決定與否之指導方針。而在一人之辦公室內，此指導方針可提供操作之一致性及制訂特定政策之誘因，且亦適用於其他規模之部門。

有些檢察機關採用整合起訴（vertical prosecution）制度，並獲得良好成果，可見上開指導方針對於整體運作具有相當之重要性。

3. 分流處分（diversion）

4-3.1 檢察官之職責

對案件是否為分流處分（diversion）以使其脫離刑事司法體系，係檢察官之職權。檢察官依其裁量判斷對犯罪者為分流處分（diversion），即以訴訟外替代方案處理，當更符合刑事司法之最大利益。

4-3.2 分流處分（Diversion Alternatives）

檢察官應充分瞭解分流處分（diversion programs）之範圍與實用性。檢察署應採取措施以確保所有分流處分都是可行的及有效的。

4-3.3 分流處分之需要性

當檢察長認為其轄區內之分流處分程序尚不充分時，應督促建立、維護及促進必要之分流處分。

4-3.4 資料蒐集

檢察官應蒐集相關必要之偵查資訊、個人基本資料、案件記錄與刑事前科紀錄以作出妥適、合理之分流處分，並使被告脫離刑事司法體系。檢察長應採取措施以確保相關法規之訂定，並使檢察官得從相關單位取得前開資訊。

4-3.5 裁量之依據

若檢察官認為符合司法利益並利於社會及個人時，得為分流處分（diversion），以使被告脫離刑事司法體系。檢察官之裁量依據包含下列因素：

a. 犯罪之性質、嚴重性與類型。
b. 犯罪是否具備特殊之特質或困難。
c. 是否為初犯。
d. 被告配合分流處分（diversion program）之獲益可能性。
e. 是否有符合被告需求之計畫。
f. 分流處分（diversion）與犯罪對於社會之影響。
g. 相關執法機關之建議。
h. 被告再犯可能性。
i. 分流處分可使被告得以維持就業或留在學校之可能。
j. 被害人之意見。
k. 損害賠償之規定。
l. 對被害人造成之影響。
m. 類似情況之分流處分（diversion）決定。

4-3.6 分流處分之程序

分流處分（diversion）程序應包括以下：

a. 特定被告應遵守條件之書面協議或法院書面紀錄。
b. 若可適用者，放棄快速審判之書面。

c. 於指定時間內，檢察官經公共利益判斷有權續行本件刑事案件。

d. 適當機制以確保案件起訴，如有罪承認、不爭議事項協議（stipulation of facts）、證人審判外證詞。

4-3.7 分流處分（diversion）之書面記錄

除法律明文禁止外，被告參與分流處分之記錄，包括分流處分之原因都應逐一記載，並由檢察機關加以維護，以利執法機關嗣後使用。

4-3.8 分流決定之說明

檢察官依規定應對被害人、證人、相關執法機關、法院、分流處分執行機構（statewide diversionary programs）、利害關係人等，就分流處分作充分之說明。

註釋

分流處分提供檢察官對於刑事追訴之替代處理計畫，對刑事被告甚或可能之被告分流導向至刑事審判定罪以外之結果。分流處分之目的包括：

減輕法院案件量，以節省司法資源供更重大案件使用。並藉由提供社區處遇制度（community-based rehabilitation）降低再犯率，此相對於繼續使用刑事訴訟程序，顯得更有效率且更節省成本。

在具體個案決定分流處分（diversion）是否妥適時，

必然審酌一切情狀後，主觀的認為被告及社會都能透過分流處分獲得比起訴更多之利益。

檢察長應建立分流處分（diversion）之指導方針，詳述其認為分流處分所應遵守之方法及標準。此指導方針有助於檢察官為分流處分時，有統一之標準及遵循之依據。

保障社會公益與保障個人權利是同樣的重要。但須謹記受分流處分之個人均係經指控犯罪，而其所以能免於被追訴，僅因給予另一替代程序顯然較為妥適且更為有益。

4. 審前釋放（Pretrial Release）

4-4.1 檢察官之責任

檢察官認被告得以交保時，須要求相當數額以確保被告在日後訴訟程序中出庭；亦應在法律允許下，確保被告不會對他人或社會造成危害。在法律允許下，檢察官有相當理由認為被告具下列情形時，得要求被告予以拘禁而不應保釋：

a. 被告在審判前釋放將對他人或社會造成危險。
b. 有可能變造證據、不正當影響證人、或其他干擾正常訴訟結果。
c. 有潛在逃亡之風險。

4-4.2 交保數額之要求

檢察官應蒐集關於被告情況及素行之相關資訊，以要

求酌定適當之擔保金額。檢察官要求適當保釋金額時，得考量下列因素：

a. 被告工作狀況及履歷。
b. 被告經濟狀況、籌資能力及資金來源。
c. 被告居住於社區時間之長短以及其於社區中所扮演角色，並考量被告家庭與社區聯繫性質與程度。
d. 在考量所涉犯罪之性質、嚴重性、證據強度、有罪判決刑度等因素，及被告於候審期間內潛逃或犯下其他罪刑之可能等關連性因素。
e. 被告犯罪前科，包括在其他起訴案件中出庭或不出庭紀錄。
f. 被告威脅證人、被害人，或變造證據之可能性。
g. 確認保證人擔保之可信性。
h. 其他顯示被告與社會連結之要素。

檢察官要求保釋金或其他釋放條件時，不應超越確保公眾、社會安全及被告於審判中到庭等之其他考量因素。

4-4.3 持續性義務

在被告具保釋放之決定後，如有其他資訊顯現先前之具保金額或條件不適當時，檢察官應修正保釋金額或條件。

4-4.4 審前羈押之替代方案

檢察官認為審前釋放，符合前述4-4.1條所規範之責任時，應建議被告具保釋放以替代羈押。

4-4.5　定期報告

於羈押被告時，檢察官應要求定期報告，以決定目前羈押條件是否妥適。檢察署依法應掌握候審釋放之被告（defendant released pending trial）有無任何違反審前釋放（pretrial release）條件之行為，進而視情形決定是否撤銷釋放決定、提高保釋金且（或）採取適當處罰。

註釋

檢察官轄區內之法律及程序形塑了建議保釋金數額及釋放之條件。此程序包括了逮捕傳喚，及在適當條件下請求羈押被告而不予保釋。

基於無罪推定原則之規定優先選擇釋放待審中之被告。然因檢察官之公益代表性，本守則亦清楚在某些情況下，被告具有高度潛逃之風險、或有傷害、恐嚇證人及被害人之威脅，或有湮滅、偽造證據之可能，此時不予具保或訂定被告無法支付之高額保釋金則較為妥適。

當審前釋放條件成立時，負責監督被告配合度之第三人或特定機關應使檢察官得以繼續評估被告之行為。檢察官應繼續行使其裁量權，以決定是否修正釋放之條件（無論是減少要求、施以制裁或申請羈押都屬之）。

5. 首次聽證程序（first appearance）

4-5.1 檢察官之責任

檢察官應配合執法人員與法院，使被告能順利且無不必要遲延的遣送至審判人員前。

4-5.2檢察官之角色

除法令或法院命令另有要求外，檢察官於首次聽證程序不需出庭。若檢察官於首次聽證程序到庭時，在可行範圍內應確認以下事項：

a. 被告有正確施以鐐銬
b. 起訴為正確且適當
c. 確認法院所安排之程序，並避免程序受到不必要之延宕

若首次聽證程序中，被告未有辯護人陪同，檢察官不應使被告放棄其預審程序（preliminary hearing）或其他審前程序之權利。

註釋

雖然檢察官於首次聽證程序通常不具主導地位，其仍應與執法人員及法院密切配合建立標準程序，以正確起訴而無不當遲延，且有足夠時間供檢察官運用。

6. 預審程序（Preliminary Hearing）

4-6.1 檢察官之角色

預審程序時，檢察官應到場，並提出足以使法院為有相當理由裁定（probable cause determination）之可信資訊。

4-6.2 權利放棄

在接受被告放棄相當理由裁定程序前，檢察官應確認被告之決定係充分了解且自願性的。被告在放棄前有與辯護人討論之機會，是有效權利放棄之前提要件。

註釋

有關預審程序要件，在不同管轄權間，有相當大差異。本守則肯認預審程序之重要性，並說明了檢察官在預審中有責任確保法院程序之公平性。

7. 沒收（Forfeiture）

4-7.1 檢察官之角色

檢察官應致力於制定與執行「沒收犯罪所用或犯罪所得財產」之相關法令。

4-7.2 辯護人之影響

被告選任辯護人之能力，並非檢察官執行沒收法規時所應考慮之事項。

4-7.3 沒收減輕之考量因素

檢察官對於不法財產或利益之擁有者，得本於專業判斷裁量是否減輕、減少或放棄沒收執行。於此種情形，檢察官應考量該不法財產或利益之擁有者是否具下列因素：

a. 財產或利益擁有者在獲得或持有該財產利益時，係因善意或有確實實理由不知該財產或利益將導致沒收
b. 沒收之結果將對於無辜之財產或利益擁有者造成重大損害
c. 該財產不會被用於幫助未來之犯罪，或導致財產遭沒收者獲得利益

4-7.4 不應納入考量之因素

「沒收財產得充作執法機關之資金」，不該影響檢察官行使沒收或刑法執行之裁量權，沒收亦不應作為追訴犯罪之替代手段。

註釋

沒收制度之核心價值在於行為人不應因其違法行為而獲利。故除了損害賠償之外，對其他人達到犯罪預防之威嚇效果亦相當重要。

一般來說，所有權之利益係混合而涉及複數人的，故一旦沒收時必會對他人造成不利結果，因此在具有上揭減輕情事時，檢察官得決定「減輕、減少或放棄沒收」等之妥適性。本守則是對檢察官之裁量權行使提供指引。

沒收之目的乃在於嚇阻犯罪，及除去不法行為相關之工具、所得利益等。

8. 大陪審團之控訴功能

4-8.1 檢察官之職責

於法規命令允准範圍內，檢察官於大陪審團前應為或得為下列事項：

a. 得解釋法律，並對於特定證據在法律上之重要性表示意見
b. 對於大陪審團工作提供程序及行政事項上之協助以使其運作
c. 得建議對於特定控訴之駁回
d. 若檢察官認為依現存證據依法不能起訴時，應建議大陪審團不起訴；檢察官亦應鼓勵大陪審團思考「是否有足夠證據存在，以使檢察官於審判中達成國家要求之舉證責任」

e. 應採取一切必要措施，以保護大陪審團程序之秘密性

4-8.2 大陪審團前之證據

除法律或司法倫理規則有規定外，於大陪審團前為證據開示時，應遵守下列事項：

a. 檢察官按照法律或行為倫理之要求，應對大陪審團開示已為檢察官知悉確實無罪之證據或資訊，或是合理相信將否定有罪判決之證據
b. 檢察官若明知證據係執法機關違法取得者，不應提交大陪審團
c. 在缺乏有效之權利拋棄（valid waiver）下，檢察官若明知或確信一訊息已受律師保密義務之保護時，則不應向證人探詢該資訊
d. 檢察官不應有任何不當影響大陪審團程序中之證人證言行為
e. 若檢察官深信證人在大陪審團前，將主張第5條憲法修正案（Fifth Amendment）不自證己罪之拒絕證言權時，除檢察官計畫挑戰證人拒絕證言權或尋求豁免許可（grant of immunity）外，不應於大陪審團程序中傳訊該證人。此時，得告知大陪審團有關證人不出席之原因
f. 檢察官應告知大陪審團有親自聽聞證人證言或調取相關記錄之權力

g. 檢察官明知為不實之證據，不得故意對大陪審團提出
h. 檢察官不得故意對大陪審團，就事實或法律意見為虛偽陳述

4-8.3 受禁止之行為

檢察官不應為可能不當減損大陪審團獨立性之舉動或發言。

4-8.4 傳聞證據

檢察官依據法律或法院規則，得對大陪審團提出可信之傳聞證據。但一經提出，須告知其為傳聞證據。

4-8.5 陳述之書面紀錄

依管轄區之規定，若大陪審團程序應制做筆錄者，檢察官之建議、評論或其他與大陪審團之溝通，除法律另有規定外，應做成書面記錄。

註釋

本守則概述了在不侵害大陪審團之獨立性下，檢察官得為何種行為。而為求尊重大陪審團之獨立性，上揭準則課予檢察官應就自身行為保持與審理前相同之公平性。

9. 開示（Discovery）

4-9.1 檢察官之職責

不論何時，檢察官均應誠實履行其證據開示義務，並採取有助於開示制度目的之行動，亦即將突襲性減至最低，並提供對證據交互詰問之機會、促進裁判程序及遵守正當法律程序。為推動上開目標，檢察官應開示重大資訊（material information），並即時回應辯護人依法對於開示之請求。

4-9.2 持續性（continuing）職責

檢察官於審前或審理中之任何時刻，發現有其他證人、資訊，或其他先前曾被要求且符合應開示義務之事物，應即時通知辯護人並提供相關資訊。

4-9.3 阻礙證據接近之禁止

除非法律或法院命令（court order）有其他規定，檢察官不應阻礙辯護人對案件之調查或準備。

4-9.4 身分欺瞞之禁止（Deception as to Identity）

檢察官對於其係檢察官之身分或隸屬關係，不應欺瞞被告或證人，但法律或法院命令有特別規定者，不在此限。

4-9.5 證據節錄（redact）

當僅有部分之證據資料可得開示時，檢察官應致力於節錄刪除其他不得開示之證據資料，以免被告混淆或產生偏見。

4-9.6 雙向揭露（Reciprocal Discovery）

檢察官應採取措施，以確保辯方遵守其證據開示義務。

註釋

證據開示規則在各轄區間存在顯著差距，各州和聯邦之檢察官對於各自之法律亦有不同詮釋。因此，本守則以公平及責任為討論之出發點，並未直接參考各轄區法規之具體解釋。

證據是否應開示？可確定的是若有疑問時應以有利於被告之面向來解釋，且對被告有利之證據及彈劾證據須開示。此外，依各轄區之法規、案例法（case law）及倫理準則，可能有須進一步開示之要求。

為合乎憲法、其他法律和倫理準則所要求之開示義務，若資訊係於開示程序後，始由檢察官所知悉時，亦應立即交出該資訊。

證據開示有應注意者，第一、檢察官應教育執法機關，證據開示之決定者係檢察官，非執法機關之個人或單位。並應鼓勵執法機關提供所有資訊予檢察官，以使檢察官得為開示與否之判斷。

第二、檢察官與辯護人之關係，或檢察官對被告之意見，都不是證據開示時所應考量之因素。

第三、檢察官之工作成果係屬於典型得免於公開之類型，而將何者列入「工作成果」時，則必須謹慎小心。

第四，出現「是否有開示必要」之爭議，且無法由兩造友善解決時，考量之因素則必須訴諸法院指示。

10. 庭期安排及優先順序

4-10.1 檢方之職責

檢察官不該因其欠缺準備，而試圖拖延案件；亦不該以造成被告或辯護人之不利益為目的，而試圖拖延案件。

4-10.2 排列優先次序之考量要素

排列案件之優先次序時，檢察官應考量下列因素：

a. 刑事案件通常應優先民事案件。
b. 被告是否在羈押中。
c. 被告對他人是否表現出顯著之暴力威脅。
d. 被害人是否為被告之小孩或家庭成員。
e. 被告是否為累犯。
f. 被告被指訴是否為重大之犯罪。
g. 被告是否擔任公職。
h. 是否為陳年老案。
i. 證人或其他證據之可得性。

j. 對於社會有無顯著之問題或特別關注之利害關係。
k. 科學檢測證據之必要性及可得性。
l. 被害人及證人年齡、健康及其他狀況。

4-10.3 審訊庭期之安排

檢察官應盡責準備案件審理，不該造成或容忍不合理之遲延。下列因素則可為案件遲延是否合理之考量：

a. 本案為刑事或民事案件。
b. 被告是否羈押中。
c. 被告是否對他人構成顯著之暴力威脅。
d. 被害人是否為被告之小孩或家庭成員。
e. 科學檢測證據之必要性及可得性。
f. 被害人及證人之年齡、健康及其他狀況。
g. 被告是否為累犯。
h. 罪行之嚴重性。
i. 被告是否擔任公職。
j. 案件進行之期間。
k. 證人之可得性。
l. 是否存在其他顯著因素，足認或足證任一方要求延期係有必要。

註釋

檢察官追求正義時，應記住「遲來的正義不是正義」。以社會觀感言，對於違法行為處置之拖延，將使社會對刑事司法體系之信賴及效率產生不佳之觀感。對被害

人及其家庭而言，都難以走出案件之傷痛；而被告之未來則仍持續處於不確定之狀態。簡而言之，案件之拖延對每個人都沒有好處。

換言之，實際上是因為控辯雙方之案件負荷及完整調查之必要性等，以致案件處理通常較想像費時，本守則提出之準則乃在於盡量合理地縮短案件處理之遲延。

11. 少年司法

4-11.1 檢察官之職責

少年若為成年人，其行為將構成犯罪時，檢察官對於如此被控訴之少年案件應全程出庭。檢察官主要職責在於全面且忠實的代表州之利益並實現正義。雖檢察官首要關注於社會安全、社會福祉及被害人利益，然其仍應考量少年之特殊利益和需求，不致於過度地與社會安全、社會福祉及被害人利益等加以妥協。而所有提交於少年或成人法院之正式起訴文件應由檢察官準備和審查。

4-11.2 人力與資源

檢察署應投入具體之人力與資源，以履行其對於少年犯罪訴訟之職責，並應編制專門處理少年案件之單位或檢察官。

4-11.3 少年法庭檢察官之資格

選派辦理少年事件之檢察官必須經過專門訓練且具備相當經驗。檢察長選任少年法庭之檢察官應基於其能力及適任性，包含對少年法之知識、對兒少之關注、學經歷和經驗等。少年事件處理單位之新進檢察官與其他部門之新進檢察官具備相同資格，仍應接受關於少年事務之專業訓練。

4-11.4 少年事件之審查

檢察官或被指派者應審查所有案件，以決定是否應移轉至成人法庭、正式呈送少年法庭、或轉介。若事實在法律上不足以認定犯罪行為，則應停止或退回，以等待或接受進一步之調查結果或報告。

4-11.5 移送至成人法庭

當決定是否將少年移送至成人法庭時，檢察官應考量其他因素，如少年所犯罪行之嚴重性或先前不良紀錄等，且少年法庭之治療處分和其他替代方案是否已合理指出：

a. 足以保障社會安全與福祉。

b. 足以處理少年之非法行為。

4-11.6 決定正式裁決或轉介之標準

檢察官須依法充分審查不適合移送至成人法庭之案件，以確定是否應正式提交少年法庭裁決或應轉介治療、勞動服務或緩刑等處分。在選擇正式裁決，或在法律允許下為轉介處分時，檢察官應考慮以下因素，以決定何種處置最符合社會和少年之利益：

a. 被指訴罪行之嚴重性，包括其行為是否涉及暴力或造成他人之人身傷害。
b. 犯罪行為中少年所扮演角色。
c. 少年前案之性質及數量，及案件之處理情況。
d. 少年年齡、成熟程度和精神狀態。
e. 是否存在適當之處遇計畫，以供少年法庭或轉介處分使用。
f. 少年是否認罪或坦認參與指訴之犯行，及是否願為其行為負責。
g. 少年之行為對他人人身或財產造成之危險或威脅程度。
h. 類似情形所為之裁決。
i. 對被害人是否已作出金錢賠償。
j. 相關機構、被害人、執法機關等之建議及少年主張。

4-11.7 轉介處分

檢察官應就案件是否適宜轉介處分提出建議。在檢察署所規劃之治療、損害賠償、公共服務等計畫均屬可行，

亦可參考現存之緩刑或社區處遇機構之作法。但在審判程序中，檢察官除非有理由相信可依合法證據證明少年之犯罪行為，否則不應予以轉介處分。

4-11.8 處置之協議

雖檢察官行使傳統之追訴裁量權時，首要考量仍在於公共利益之保障；但其決定是否採行處置協議，仍應同時考量社會及青少年之利益。

4-11.9 審判中檢察官之角色

在審判程序中，檢察官應擔任其傳統法庭之當事人角色。

4-11.10 處分權

檢察官應於處分之審查時扮演積極角色，並在檢察機關、感化部門或其他機構提出報告之審查後，對法院提出建議。檢察官提出建議時，應考量最符合少年之利益與需求，並與社會安全和福祉一致之處理。

4-11.11 被害人之影響

在處分之審理時，檢察官應讓法院注意到少年所為行為對於被害人與社會之影響。

4-11.12 評估計畫

檢察官應定期審核檢察署內外之轉介處分與處遇計畫，以確保提供少年犯適當之監督、處遇、損害賠償或服務。檢察官與提供轉介處分及處遇服務機構間應保持合作關係，並確保其決定之一致且適當的。若檢察官發現少年並未受到處遇或轉介處分所預想之照護或處置效果時，檢察官應將此情形通報法院。

4-11.13 報告之責任

若檢察官發覺法院判處處罰後，並未使少年至指定之機構執行，或其管理方式並不適當時，應採取一切合理方法，以確保機構長官受告知並採取適當手段。若情況未獲改善，檢察官有責任將其顧慮告知相關機構人員，於必要時並應通報法院。

註釋

檢察官有責任如同對成年人起訴般之追求正義。然而，在少年事件體系中，檢察官更被要求在忠實代表國家利益之不衝突範圍內，應特別關注少年之利益及需求。該項特別關注反映出少年事件之處理原理在於加強社會安全與福祉，並經由辯護人扶助、損害賠償、廣泛修復措施及處罰等，以使少年避免再次之犯行。

檢察官為有效實現其職責，宜參與所有訴訟階段。如此，檢察官可持續聚焦於每個決策階段之社會安全與福

利。更進一步，由於少年刑事體系逐漸當事人進行主義化，檢察官扮演提出其他少年及社會服務支持者主張論據之重要角色。檢察官到場則確保了在各階段都有持續監督之機會，並在廣大之裁量權下得以確保公平公正之實現。

本守則進一步強調少年法庭工作之專業化，並規定少年法庭檢察官應要有經驗、能力及興趣。由於少年程序之當事人性質逐漸增強，檢察官則應負責審查，以確定是否有充分證據足以相信犯罪已發生確係少年所為。案件只有在法律上充分時，才會進一步處理。“法律上充分”則是指檢察官認為在審判時有足夠合法證據可證明少年之犯行。然而如此之認定，均應由檢察官為之。

確認法律上充分後，則應再決定是否移送成人法庭、轉介處分、或移送少年法庭。此決定同時具備法律上和社會上意義，應由富有經驗且對少年事件有興趣之檢察官，或在檢察官指導下之其他人員為之。檢察官在行使職權時，應盡量滿足青少年之需求，同時維護社會安全及福祉。至於涉及成年人之情形時，決定之作成不得無故拖延；因妥適之決定可提升被害人、社會大眾和少年對制度及公平性之信心。此外，妥適決定更可透過提供立即的關注，以使少年復歸社會。

在許多轄區內，少年移送成人法庭是由法律或司法實務所決定。本守則僅為參與此程序之檢察官提供其裁量權行使之指引。

對於並非嚴重之犯行，將之由向少年法庭提起正式起訴、裁決和處置程序中分流出來，已成普遍現象。推動此程序，係因大多數少年犯都還處於其發展行為和價值觀之

階段中，正可在少年法庭之過程中獲得難得之機會，以使其避免再度從事犯罪活動，故檢察官應認真思慮參與。對此制度中許多負面看法者來說，無疑的是若案件得到妥善處理，許多第一次犯或輕微犯都將不會再進入司法系統。而治療、恢復原狀、或服務計畫相對於法院程序，通常都是可行之替代方案。本守則說明了檢察官可選擇其機關現有之轉介程序、或移轉至現行緩刑、社區服務機構等。

本守則指出少年法院適用之認罪協商程序與成人法庭適用之認罪協商程序相同，都是妥適的協商。認罪協商之妥當性與範圍，乃官方政策事務，則應由檢察長決定。檢察官應設法確保最終處置是在考慮公共利益、及符合青少年需求後所作成。

只有在具備合法證據足以表面證明少年確已犯下其認罪協商之犯行時，始得進入認罪協商程序。

對於不轉介而須要審判之案件，檢察官應擔任傳統起訴之當事人角色，並藉由訴訟程序以確認少年之有罪或無罪。因此，本守則建議在同一審判轄區內，少年案件與成人案件之審判應適用相同之證據法則。檢察官應盡力使少年法庭對於有罪及無罪之事實認定及處置決定維持其標準。如此，方可提升對被害人和社會之公平性，並提高少年法庭裁決之完整性。

檢察官應向法院提出其他妥適之處置選項，並當少年有危及社區安全和公益時，應表達此顧慮。另一方面，檢察官可適時的在少年法庭法官考慮加重刑責時，提出較寬鬆之處置建議。

本守則亦建議檢察官在社會上應擔任領導角色，以確

保對少年宣判時有更多妥適之處置選項。且檢察官更進一步的被要求應追蹤案件之進行，以確保處置、裁處及治療等均有完成。

第五部分：認罪協商及認罪協議之適當性

1. 總則
2. 認罪協商之可行性
3. 決定認罪協商之可行性及可接受性之因素
4. 認罪協議之履行
5. 認罪協議之記錄

1. 總則

5-1.1 適當性

認罪協商程序有處理刑事控訴，並取代審判程序之效果，但檢察官並無義務進行認罪協商程序。無論如何，在顯示符合公眾利益時，檢方得進行協商以達成妥適認罪協議之目標。而當達成可行之協議時，應形成書面。

5-1.2 認罪協商之類型

在達成認罪協議時，檢察官同意案件之處置可包括數個承諾，以作為認罪協商之交換條件：

a. 當被告進入認罪協商或不爭辯時，可向法院提出判刑之具體建議。

b. 對於辯方提出之量刑請求，同意不予反對。
c. 若被告對於其他罪行或其他由被告行為所致之犯行進行認罪協商或作出不爭辯時，則對於起訴之犯行予以撤銷、請求駁回或不反對駁回等。
d. 若被告同意對被害人、證人、執法機構及其人員、檢察署人員、調查員等不爭執民事部分，則對於起訴犯行予以撤銷、請求駁回或不反對駁回，或不提出可能之指控。
e. 若被告進入認罪協商或不爭辯時，同意放棄對被告其他犯罪行為所進行之調查。
f. 同意由被告與檢方共同向法院建議經協商之量刑，若法院之量刑超過協商之量刑時，檢方亦同意由被告聲請撤銷認罪協商。

5-1.3 有條件之要約

在達成認罪協商前，檢察官依本守則及法律限制可在認罪協商中提出下列條件：

a. 被告須在指定期限內接受條件，以避免進行審前準備。
b. 被告須放棄某些審前權利，如請求證據開示之權利。
c. 被告須放棄某些審前請求，如制止或駁回之請求。
d. 被告須放棄某些審判中或審判後之權利，如尋求上訴之權利。

5-1.4 一致之認罪機會

同樣地位之被告應得到相同之認罪協商機會。檢察官在考慮是否對被告提出認罪協商之要約時，不應將被告之種族、宗教、性別、性向、民族血統、政治傾向或信仰等列入考慮，除非係與起訴之犯罪行為有法律上之關連。

2. 認罪協商之有效性

5-2.1 協商之意願

檢察官應提出協商意願單，以與被告進行認罪協商，且除審前聽證會外，應預留時間和空間以利進行協商。

5-2.2 辯護律師之在場

除非被告之辯護人已在場，或已表示許可檢察官得直接與被告進行協商，否則檢察官不應直接與已選任辯護人之被告進行認罪協商。

3. 決定認罪協商之可行性及可接受性要件

5-3.1 考慮之要件

在進行認罪協商前，檢方應考慮下列要件：

a. 被告之性格。
b. 被告遭指控犯行之程度。
c. 有無可能減輕之情形。
d. 被告之年齡、背景和犯罪前科。
e. 被告表現出之懊悔或悔意，及為其所犯罪行負責之意願。
f. 用以支持有罪判決之合法證據。
g. 是否對被告造成過度困難。
h. 審判所可能造成之嚇阻程度。
i. 不起訴是否有助於檢方之其他目標。
j. 違反法律而未受執行之經歷。
k. 個案對法律原則建立之可能影響。
l. 被告被定罪時，可能獲得之刑度。
m. 案件進入公判之社會利益。
n. 被告協助調查及指控其他被告之意願。
o. 在其他司法管轄權下起訴之可能性。
p. 對於被害人透過民事救濟或透過刑事訴訟程序回復原狀之可行性。
q. 被告放棄上訴之意願。
r. 對被害人、證人、執法機關或其人員、檢察署人員、調查員於逮捕行動中所產生之可能民事訴訟，被告願放棄提起訴訟之權利。
s. 基於對證人之尊重，檢方應考慮下列因素：
   1. 證人作證可行性及意願。

2. 證人任何身體上或精神上之障礙。
3. 證人指認被告之準確度。
4. 證人之可信度。
5. 證人與被告之關係。
6. 證人有無任何可能不適當之動機。
7. 證人之年齡。
8. 證人因其作證所可能造成之困難。

t. 基於對被害人之尊重，檢方應考慮上述及以下所列之要素：
1. 被害人所受身體傷害及精神創傷是否存在及其程度。
2. 被害人所遭受之經濟損失。
3. 被害人因其作證所造成之困難。

5-3.2 無罪之被告

檢察官應自我警惕，因被告於無罪之情形下仍可能受到指控。故檢察官對於進行認罪協商之犯罪，應自我要求需要有合理之事實依據。

5-3.3 公正坦率

在認罪協商過程中，檢察官不應故意對被告作出法律上或事實上之錯誤或誤導陳述。

4. 認罪協議之履行

5-4.1 權力之限制

檢察官不應擔保法院之判決將給予被告何種科刑處分，或被告將被宣告緩刑等之承諾。檢察官可對被告說明關於該案件之處置方式，包括根據事實及被告犯罪前科等已知資訊，而將向法院提出之科刑建議等。

5-4.2 權力之意義

檢察官不應對被告作出任何承諾、保證、或擔保法院將對本案為如何之特定科刑或處置。檢察官亦應避免暗示，擁有超出實際上對本案處置之影響力。

5-4.3 無力履行協議

除被告不遵守協議或基於法律之授權外，對於已被接受且被告已為不利於己之認罪協議，檢察官不應不予遵守。如檢察官無法履行先前認罪協議之內容，應及時通知被告，並在確保法院許可狀態下，給予被告撤回認罪、採取其他步驟之機會；且將被告之地位回復至認罪協商前之狀態。

5-4.4 其他人向法院陳述之權利

在認罪協議中，對於被害人或其他法律授權之人於認罪協商或量刑時，向法院陳述之合法權利，檢察官不應承諾將予以限制或阻礙。檢察官應尊重被害人及其他法律所授與權利人向法院陳述之合法權利。

5-4.5 媒體之通知

被告於公開法庭為有罪之答辯前，檢察官不應向媒體就被告所為認罪協商之可能性或存在性，及任何協議之本質或內容作出超過審判上之評論。

5. 認罪協商之紀錄

5-5.1 認罪協商之紀錄

當刑事起訴案件之處置係以認罪協商終結時，檢察官應將協商之事實及協商約款（terms of the agreement）作為紀錄之一部分，並應將此做為認罪協商之理由記錄於卷宗檔案中。

5-5.2 撤回起訴（Nolle Prosequi）之理由

當重罪案件以撤回起訴（Nolle Prosequi）或以其他相類方式而由法院為不受理（dismissed）判決時，檢察官應

該將其撤回起訴之理由記載以作為紀錄。

註釋

自檢察官追求正義之角度看，刑事案件之得到處理而無須進入法院審理程序，已愈來愈顯重要並受到喜愛。且少有檢察官擁有將全部案件送入法院審理之資源。鑒於現實，檢察官都會盡可能積極參與協商，以就大部分案件求取妥適之處置。

如同其他雙方訂立協議般，大部分之認罪協商均需要檢察官及被告等雙方共同做成。也如同其他協議，認罪協商須以誠實及正直之方式為之，亦即檢察官須認知其公益代表人角色，故此須留意公正誠實義務（duties of candor），並避免與被告交涉任何越權之舉措。檢察官應謹慎避免承諾無法履行之條件，同樣的被告亦應認知到若無法履行協商條件時，可能面臨檢察官撤回協商之後果。

因故無法履行部分協商內容時，檢察官應盡最大努力，以使被告及案件之訴追狀態回復到協商前。

此外，如同所有存在於對立雙方間之協議，協商內容最好能以書面為之，並將之置於協商審理（plea hearing）紀錄中。

在其他協議中較不常見，但在認罪協商中可能存在之問題，就是無罪被告可能為了避免遭受重刑而願意作認罪協商。檢察官考慮到本守則所列各項因素，應以最大努力避免做出有損正義之事。

第六部分：審判

1. 誠實公正面對法庭
2. 遴選陪審員
3. 與陪審員之關係
4. 開場聲明
5. 證據呈現
6. 證人訊問
7. 異議及請求
8. 向陪審團之結辯（Arguments to the jury）

1. 誠實公正面對法庭

6-1.1 錯誤陳述

檢察官絕不可在法庭上故意為錯誤之事實或法律陳述。若發現先前重要事實或法律之陳述有誤時，檢察官應適時更正。

6-1.2 法律權責單位

關於對口人員，檢察官應通知轄區內具有法律權責之法院。

6-1.3 提供不實證據

檢察官不應提供其明知為不實之證據。若檢察官察覺

先前所提供之重要證據不實時，應採取合理之補救措施，避免此一不實證據引起相關之損害。

6-1.4 一造辯論程序

檢察官於法律允許之一造辯論程序中，對於其所知且合理相信法院欲作成專精判決所需之全部重要事實，應告知法院。

註釋

為了做出專精（informed）判決，法院須獲得相關事實及法律之最精確資訊。檢察官作為正義執行者，須以誠實及正直之方式提供資訊予法院。

2. 遴選陪審員

6-2.1 調查

檢察官可對候選陪審員進行預先調查，但其調查作為不能騷擾或脅迫候選陪審員。檢察官得查詢候選陪審員之前科資料，且在法律或法院命令要求之範圍內，分享資料予法院及辯方，以作為陪審員篩選程序審查之用。

6-2.2 陪審員篩選程序

進行陪審員篩選程序時，檢察官不應(a)以造成候選陪

審員不必要尷尬之方式為之，或(b)故意利用陪審員篩選程序，呈現不允許於審判程序中所開示之資訊。

6-2.3 不附理由拒卻權

檢察官不應以違憲方式，有意地將特定群體排除在陪審員以外；或以其他法律所禁止之方式，行使不附理由拒卻權。

6-2.4 持續期間

檢察官選擇陪審員時，應避免不必要之遲延。

6-2.5 陪審員身分

若有相當理由足認陪審員將受到人身或精神上之傷害時，檢察官得請求法院對被告或一般社會大眾保密陪審員之身分。

註釋

遴選陪審員之首要目標在於選任出能代表全體社會之陪審員，避免陪審員因個人利益或對當事人存有偏見以致於無法依據事實及法律做出裁判。檢察官於選任陪審員時，均應遵守本守則所提出之標準。

在進行陪審員篩選程序前，法院得思考以問卷方式蒐集陪審員之基本資訊，以節省時間。

檢察官行使不附理由拒卻權時，應注意其身為轄區內所有人民之代表，不應因某人屬於某一特定群體，而拒卻其成為陪審員之資格。

本守則認知到，近來陪審員時有受到暴力威脅，而有保護陪審員之需求；及若有合理理由認為陪審員受到威脅時，檢察官得要求法院向被告及社會大眾為陪審員身分之保密。

3. 與陪審團之關係

6-3.1 直接通信

除在法庭上雙方當事人與法官都在場，並形成紀錄外；檢察官在審理之前或審理過程中，都不應該故意與任何陪審員或準陪審員交談或進行溝通。

6-3.2 解散後

陪審團經解散後，除經法律禁止外，檢察官可與整個陪審團或任何陪審員討論判決和證據。檢察官在經允許之管轄區內，可要求法院告知陪審員，若陪審員有意願者，可於判決後與該案律師討論案情。檢察官在溝通過程中，都不應批評判決、騷擾陪審員，或有意影響未來之陪審團。檢察官經陪審員要求後，應即停止聯絡。

註釋

檢察官有極大之責任使刑事司法體系得到尊重和改進，故其須謹慎避免有利用陪審員或陪審團之不正行為。在審判後，檢察官不應該有批評裁決或陪審員之行為。因如此可能會被視為試圖影響未來陪審員之行為。

4. 開場聲明

6-4.1 目的

若經法律允許下，檢察官可致開場聲明，以解釋法律和事實之爭點、證據，及特別之審判程序。

6-4.2 限制

檢察官不應該影射證據，除非善意的相信此證據係審理中合法可用之證據。

註釋

檢察官應遵守規定原則，即開場聲明應僅限於事實，亦係其真誠計畫證明之事實。雖然檢察官之聲明僅限於事實，但如此主張之事實須根據善意及合理相信有合法證據支持者。

檢察官應積極保持妥適性和公平性，亦即其行為相當於法院人員，而其職責亦在於代表人民以尋求正義。只要檢察官開場是善意，且合理地相信其主張之事實將被合法

證據所支持，如此即符合開場聲明之基本要求。

5. 證據呈現

6-5.1 合法性

檢察官在陪審團面前，不應提及或顯示無充分理由相信將獲准供證據使用之證言或證物呈現。

6-5.2 合法性之可疑

檢察官在陪審團面前，預計使用證詞或證物呈現有合法性之疑問時，應先努力獲得證據合法性之裁決。

註釋

符合公平應係檢察官之理念，其不該沒有先尋求法院之裁決，即讓陪審團暴露在合法性存疑之證據前。

6. 證人訊問

6-6.1 公平訊問

檢察官應公平的進行所有證人之訊問，並應妥適的考慮合理之隱私問題。

6-6.2 不當提問

檢察官不應提出隱然存有明知為虛偽，或沒有合理、客觀依據足以相信為真之事實推斷。

6-6.3 交互詰問之目的

檢察官應使用交互詰問以真誠的追求事實之真相。

6-6.4 彈劾和可信性

檢察官知道證人作證為真實時，不該濫用交互詰問或彈劾之權力，以嘲笑、詆毀、損害或抓住一個事實方式貶損證人證詞，並對證人論以蔑視法庭罪。

註釋

刑事司法制度若欲保有人民之信賴，則須提供一民眾可提供資訊，而無須擔心將因之被騷擾或隱私遭過度侵犯之法庭。美國制度要求由控方及辯方提出之所有證人，皆能獲得公平對待。若檢察官之提問暗示有不真實之事實推斷或其推斷並非建立在合理客觀之基礎上，如此情形即非公平且不恰當。若無前述限制，狂熱的檢察官即可能利用詰問證人之機會暗示某證據之必要性，並期待陪審團忽略掉該證據根本未被准許。

由於交互詰問制度之本意係用以追求真實，因此認知到證人應如實作證之檢察官，即不應試圖嘲笑、詆毀證

人，或貶損其證詞。但這並不意味著檢察官不能採用主動式（proactive）訊問技巧，以引出對於案件發展有利之訊息。

若檢察官銘記其職責係為社會謀求正義，則依循本守則所提供之指示應是想當然爾的。

7. 異議及請求

6-7.1 程序

於審判過程中提出異議時，檢察官應於陪審團前正式聲明異議，並附上簡短清楚之異議理由。除法庭另有指示外，否則異議理由之進一步爭論通常在陪審團聽訟外之場合進行。

6-7.2 防止偏見之聲請

檢察官應盡可能在陪審團宣示前，或於第一位證人宣示前，即處理完證據能力有關之問題。若經許可，檢察官可透過提出防止偏見之聲請（Motions in Limine）程序來完成，並應請求法院用相同方式處理辯方所提出之證據能力問題。

註釋

不論是證據能力、證據呈現、展示或爭論都由法院作最後之裁決，但檢察官仍應充分熟悉證據法則，如此其就法院對於證據能力認定之預測力才能大幅提升。

當檢察官有充分理由確信證據能力、證據呈現、展示或爭論將不被接受時，應提出異議；並就異議之理由作簡短陳述。因非全部，而係大部之異議均涉及法院裁決之法律問題，而此法律論述與陪審團無關。如此爭論亦適用於程序進行中，而未經宣示即提出之證據，及其他不應被提出亦不應被採納之證據。然而在此並不阻止法庭向陪審團解釋異議及（或）其裁定之理由，以排除陪審員心中可能因不懂法律而升起之疑問；且陪審員亦不應對任一造產生不利之推斷。

為了節省陪審團、證人或利害關係人之時間，檢察官應盡可能於審判程序前解決證據能力問題。除能更節省法院之審判時間外，審前程序亦能提供更有效率之審前準備，並於情況允許下處理對不利裁定之上訴。

8. 向陪審團之結辯

6-8.1 性質

於結辯時，檢察官應公平並準確的討論法律、事實及從事實中可合理得出之推論。

6-8.2 個人意見

於結辯時，檢察官不應表達有關於動機正當性、證人可信度及被告惡性等個人意見，亦不應斷言關於爭點事實之個人認知或提及任何未於審判中允為證據之事物。

註釋

面對結辯時，是檢察官最後能捍衛有利主張之最後機會。因此檢察官更應注意可以使用之方法及限制，其於結辯時之陳述，即曾使許多案件由上級法院以「檢方之不正行為（prosecutiorial misconduct）」而發回重審。

本守則已列出建議，及發表結辯時可遵循之基本規則。檢察官應深度熟悉其轄區內有關如何妥適結辯之倫理規範及上訴理由。

第七部分：量刑

1. 量刑
2. 緩刑
3. 社區計畫方案

1. 量刑

7-1.1 公平量刑

檢察官參與量刑程序時，應盡可能確保判決係公正，並在資訊充足之情況下做成，以避免有不公平或有差別待遇之量刑。

7-1.2量刑之投入

檢察官得善用對量刑機構（可能是陪審團或法院）表達意見之機會，並於適當時機提出量刑之建議。亦應留意

被害人對量刑機構表達意見之權利有無遭受不當侵犯。

7-1.3減輕罪責之證據

檢察官在量刑程序前，應將全部知悉可能減輕被告刑責之證據向辯護人開示。除法律另有規定外，前述開示義務並未課予檢察官必須調查是否有減輕罪責證據存在之額外義務。

7-1.4 量刑前報告（Pre-Sentencing Reports）

檢察官應確認量刑係基於量刑前報告（Pre-Sentencing Reports）及檢方掌握之完整且正確資訊。

a. 檢察官應向法院或觀護人開示其卷宗內與量刑有關之全部資訊。
b. 檢察官若發現其所知悉之重大資訊與量刑前報告有所衝突時，其有責任向有關單位指出。

註釋

檢察官之參與量刑程序是使其能有繼續追求正義之機會。檢察官應係最熟悉被告、犯罪事實及讓被告走上量刑程序之人。同時，檢察官有相當經驗，可留意與被告處於相同情境下之量刑標準，以免法院作出不公平或差別待遇之量刑。

量刑程序之參與亦使檢察官有機會確保被害人可對量刑發表意見。藉由提供檢方掌握可能減輕被告刑責之證據及確認量刑前報告之正確性，整個量刑程序亦使檢察官可以確認被告是否受到平等對待。

2. 緩刑

7-2.1 量刑前報告之角色

對於量刑前報告之作成和提交，檢察官應扮演積極主動之角色，包括：

a. 檢察署應該提供資訊給緩刑單位，以使該單位了解被告背景，並作成量刑前報告。
b. 檢察署應在將量刑前報告提交法院之前，先予審核。
c. 量刑前報告與檢察官掌握資訊有所出入時，其有責任通知相關單位。

7-2.2 檢察官係重要資源

檢察署應提供輔導個案之資訊予緩刑執行之單位。

7-2.3 通知

檢察署應被通知出席緩刑撤銷、廢止之聽證會，並應被告知結果。

3. 社區計畫方案

7-3.1 認識計畫

於被告受緩刑宣告時，檢察官應認識並熟悉所有社區處遇計畫。

7-3.2 檢察官係重要資源

於法律允許範圍內，檢察官應提供相關資訊予社區處遇計畫機構。

註釋

除量刑前報告之準備外，檢察官應維持與緩刑單位之關係。若被告被放置在緩刑機構或其他社區處遇計畫之輔導下，身為公益代表人之檢察官對於法院給予被告之判決應遵守，並將相關資訊與相關機構共享；在許可範圍內，亦應協助緩刑機構及其他計畫機構將不依規定之人解送法院處理。

第八部分：宣判後

1. 宣判後

8-1.1 與審判及上訴律師之合作

在某程度上，上訴檢察官並非公訴檢察官，上訴檢察

官與公訴檢察官應互相合作，以確保足夠之信息交流。可能的話，在承認錯誤之前，上訴檢察官應通知公訴檢察官以取得爭議性問題之意見。

8-1.2 檢察官捍衛有罪判決之責任

依照本守則8-1.4和8-1.8，檢察官應捍衛合法獲得之有罪判決及經正確評估之量刑。檢察官與司法部長有一樣的責任，可要求被定罪之人盡其舉證責任，再經由上訴及攻擊有罪判決以求得平反。

8-1.3 檢方上訴

依照本守則8-1.4，當合適及基於公益時，檢察官應對審前及審理中所作裁定聲請上訴。

8-1.4 上訴爭議點

除法律上及事實上有理由允許外，檢察官不得在上訴時主張或爭論爭議問題。此理由不應係輕微，可包括善意之爭執現行法律之展期、修改或撤銷等。

8-1.5 上訴保證金

除非有理由相信該有罪判決不再有法律上或證據上之支持，或反對上訴保證金將造成重大之不公平。檢察官在

上訴期間內，對於有罪判決之被告請求免除上訴保證金時，應予以反對。

8-1.6 附帶審查

除非在法律上及事實上都有理由，檢察官不得主張或抗辯附帶審查。此理由不應係輕微，可包括善意之爭執現行法律之展期、修改或撤銷等。

8-1.7 定罪後開示程序之合作

當(1)法律、法院命令或規則之要求，(2)證據係屬憲法排除者，或(3)有理由相信被定罪之人實際上係無辜的，且有特別事實證明及有相關之證據，且若屬實，將使被定罪之人被釋放等情形時，檢察官應在定罪後之證據開示程序中，開示證據予辯護人。檢察官在同意採取明確行動以回應定罪後證據開示之要求前，可能需要被告提出實際上無罪之聲明。

8-1.8 實際上無罪案件之檢察官責任

當檢察官確信被定罪之人實際上為無辜時，應通知法院、辯護人及被告（若被告未選任辯護人），以尋求在押被告之釋放。若檢察官知悉重大及可信之證據，使其得以確信被定罪之人實際上為無辜時，檢察官應在合理時間期限內開示此證據，並通知法院、辯護人及被告（若被告未

選任辯護人）。

註釋

假設檢察官盡責於尋求正義，經由調查、篩選、控訴、證據開示、審判及量刑等程序，持續尋求正義促使其不斷努力以應對被告之上訴或附隨攻擊。此努力均需要與公訴檢察官合作，進行筆錄檢查以確定上訴範圍內有任何不利於檢方之決定，並在許可範圍內加以述明。

正如所有應對之法院一樣，上訴檢察官須將自己之論點立足於事實和法律上。因不再有無罪推定，除顯示有罪判決不再有法律及證據支持之不尋常情形存在外，檢察官應反對被告對於上訴保證金之主張。

在極少數情況中，檢察官在可信之證據呈現下，證實被定罪之人可能為無辜時；本守則則設定檢察官之責任與司法部長同樣的，為實現此一角色，檢察官須在其責任中尋求平衡，除檢視有罪判決並堅持外，也有義務檢視無辜者之避免受傷害。尋找此種平衡或許是檢察官所面臨之最大挑戰；尤以在合理衡量後，卻有證據顯示係誤判時。在作合理評估時，檢察官須拋開個人執法之尷尬、虛榮、可能尷尬，及其他會妨礙完成正義使命之因素。

National District Attorneys Association

National Prosecution Standards

Third Edition

with Revised Commentary

Table of Contents

Part II. Relations

2-6.3 Improper Influence
2-6.4 Suspicion of Criminal Misconduct
2-6.5 Responsibility to Report Misconduct
2-6.6 Application for Recusal

7. Relations with Suspects and Defendants
2-7.1 Communications with Represented Persons
2-7.2 Communication with Unrepresented Defendants
2-7.3 Unsolicited Communications
2-7.4 Plea Negotiations
2-7.5 Right to Counsel
2-7.6 Communications with Represented Persons During Investigations

8. Relations with Defense Counsel
2-8.1 Standards of Professionalism
2-8.2 Propriety of Relations
2-8.3 Cooperation to Assure Justice
2-8.4 Disclosure of Exculpatory Evidence
2-8.5 Suspicion of Criminal Conduct
2-8.6 Responsibility to Report Ethical Misconduct
2-8.7 Avoiding Prejudice to Client

9. Relations with Victims
2-9.1 Information Conveyed to Victims
2-9.2 Victim Orientation
2-9.3 Victim Assistance
2-9.4 Cooperative Assistance
2-9.5. Facilities
2-9.6 Victim Compensation Program
2-9.7 Victim Assistance Program
2-9.8 Victim Protection

10. Relations with Witnesses
2-10.1 Information Conveyed to Witnesses
2-10.2 Contacts by Defense with Witnesses
2-10.3 Represented Witnesses
2-10.4 Witness Interviewing and Preparation
2-10.5 Expert Witnesses
2-10.6 Witness Assistance
2-10.7 Witness Protection
2-10.8 Facilities
2-10.9 Enforcement of Crimes against Witnesses
2-10.10 Witness Assistance Program

11. Community-Based Programs
2-11.1 Knowledge of Programs

2-11.2 Need for Programs
2-11.3. Notice

12. Prisons
2-12.1 Knowledge of Facilities
2-12.2 Improvement of Institutions
2-12.3 Prosecutor as Resource
2-12.4 Career Offender Identification
2-12.5 Appropriate Sentencing
2-12.6 Innovative Improvements
2-12.7 Notice
2-12.8 Corrections Advisory Committee

13. Parole and Early Release
2-13.1 Prosecution as Resource
2-13.2 Information System
2-13.3 Parole Board and Release Discretion
2-13.4 Right to Appear
2-13.5 Early Release
2-13.6 Notice of Release
2-13.7 Sexually Dangerous Persons

14. Prosecutors and the Media
2-14.1 Media Relations
2-14.2 Balancing Interests
2-14.3 Information Appropriate for Media Dissemination by Prosecutors
2-14.4 Restraints on Information
2-14.5 Public Responses
2-14.6 Law Enforcement Policy on Information
2-14.7 Judicial Decisions
2-14.8 Verdicts

15. Relations with Funding Entity
2-15.1 Assessment of Need
2-15.2 Independent Revenue

16. Relations with the Public
2-16.1 Community Organizations
2-16.2 Staff Liaison
2-16.3 Public Education
2-16.4 Advisory Role

17. Relations with Non-Governmental Entities
2-17.1 Generally
2-17.2 Financial and Resource Assistance

Part III. Investigations

Part IV. Pre-Trial Considerations

2. Charging

- 4-2.1 Prosecutorial Responsibility
- 4-2.2 Propriety of Charges
- 4-2.3 Improper Leveraging
- 4-2.4 Factors to Consider

3. Diversion

- 4-3.1 Prosecutorial Responsibility
- 4-3.2 Diversion Alternatives
- 4-3.3 Need for Programs
- 4-3.4 Information Gathering
- 4-3.5 Factors to Consider
- 4-3.6 Diversion Procedures
- 4-3.7 Record of Diversion
- 4-3.8 Explanation of Diversion Decision

4. Pretrial Release

- 4-4.1 Prosecutorial Responsibility
- 4-4.2 Bail Amount Request
- 4-4.3 Continuing Obligation
- 4-4.4 Alternatives to Pretrial Incarceration
- 4-4.5 Periodic Reports

5. First Appearance

- 4-5.1 Prosecutorial Responsibility
- 4-5.2 Prosecutor's Role

6. Preliminary Hearing

- 4-6.1 Prosecutor's Role
- 4-6.2 Waiver

7. Forfeiture

- 4-7.1 Prosecutor's Role
- 4-7.2 Impact on Private Counsel
- 4-7.3 Factors in Mitigation
- 4-7.4 Impermissible Considerations

8. The Grand Jury Charging Function

- 4-8.1 Prosecutorial Responsibility
- 4-8.2 Evidence Before the Grand Jury
- 4-8.3 Impermissible Conduct
- 4-8.4 Hearsay Evidence
- 4-8.5 Statements of Record

9. Discovery

4-9.1 Prosecutorial Responsibility
4-9.2 Continuing Duty
4-9.3 Access to Evidence Not to Be Impeded
4-9.4 Deception as to Identity
4-9.5 Redacting Evidence
4-9.6 Reciprocal Discovery

10. Case Scheduling and Priority

4-10.1 Prosecutorial Responsibility
4-10.2 Factors to Consider in Setting Priorities
4-10.3 Trial Scheduling

11. Juvenile Justice

4-11.1 Prosecutorial Responsibility
4-11.2 Personnel and Resources
4-11.3 Qualification of Prosecutors in Juvenile Court
4-11.4 Screening Juvenile Cases
4-11.5 Transfer or Certification to Adult Court
4-11.6 Criteria for Deciding Formal Adjudication Versus Diversion
4-11.7 Diversion
4-11.8 Disposition Agreements
4-11.9 Prosecutor's Role in Adjudication
4-11.10 Dispositions
4-11.11 Victim Impact
4-11.12 Evaluation of Programs
4-11.13 Duty to Report

Part V. Propriety of Plea Negotiation and Plea Agreements

1. General

5-1.1 Propriety
5-1.2 Types of Plea Negotiations
5-1.3 Conditional Offer
5-1.4 Uniform Plea Opportunities

2. Availability for Plea Negotiation

5-2.1 Willingness to Negotiate
5-2.2 Presence of Defense Counsel

3. Factors for Determining Availability and Acceptance of Guilty Plea

5-3.1 Factors to Consider
5-3.2 Innocent Defendants
5-3.3 Candor

4. Fulfillment of Plea Agreements
- 5-4.1 Limits of Authority
- 5-4.2 Implication of Authority
- 5-4.3 Inability to Fulfill Agreement
- 5-4.4 Rights of Others to Address the Court
- 5-4.5 Notification of Media

5. Record of Plea Agreement
- 5-5.1 Record of Agreement
- 5-5.2 Reasons for Nolle Prosequi

Part VI: Trial

1. Candor With The Court
- 6-1.1 False Statement
- 6-1.2 Legal Authority
- 6-1.3 False Evidence
- 6-1.4 Ex Parte Proceeding

2. Selection of Jurors
- 6-2.1 Investigation
- 6-2.2 Voir dire Examination
- 6-2.3 Peremptory Challenges
- 6-2.4 Duration
- 6-2.5 Identity of Jurors

3. Relations with Jury
- 6-3.1 Direct Communication
- 6-3.2 After Discharge

4. Opening Statements
- 6-4.1 Purpose
- 6-4.2 Limits

5. Presentation of Evidence
- 6-5.1 Admissibility
- 6-5.2 Questionable Admissibility

6. Examination of Witnesses
- 6-6.1 Fair Examination
- 6-6.2 Improper Questioning
- 6-6.3 Purpose of Cross-Examination
- 6-6.4 Impeachment and Credibility

7. Objections and Motions
6-7.1 Procedure
6-7.2 Motions in Limine

8. Arguments to the Jury
6-8.1 Characterizations
6-8.2 Personal Opinion

Part VII: Sentencing

1. Sentencing
7-1.1 Fair Sentencing
7-1.2 Sentencing Input
7-1.3 Mitigating Evidence
7-1.4 Pre-Sentencing Reports

2. **Probation**
7-2.1 Role in Pre-Sentence Report
7-2.2 Prosecutor as a Resource
7-2.3 Notice

3. Community-Based Programs
7-3.1 Knowledge of Programs
7-3.2 Prosecutor as a Resource

Part VIII: Post-Sentencing

1. Post-Sentencing
8-1.1 Cooperation of Trial and Appellate Counsel
8-1.2 Duty of Prosecutor to Defend Conviction
8-1.3 Prosecution Appeals
8-1.4 Argument on Appeal
8-1.5 Appeal Bonds
8-1.6 Collateral Review
8-1.7 Duty to Cooperate in Post-Conviction Discovery Proceedings
8-1.8 Duty of Prosecutor in Cases of Actual Innocence

National District Attorneys Association

National Prosecution Standards

Third Edition

with Revised Commentary

Introduction

These standards are intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function. Unless otherwise indicated, they are intended to apply to the chief prosecutor (by whatever title) in any office, as well as to deputy and assistant prosecutors.

These standards are intended to supplement rather than replace the existing rules of ethical conduct that apply in a jurisdiction. Generally, these standards should be construed in such a way that they are consistent with existing law and applicable rules of ethical conduct. These standards are intended to be guides for prosecutors in the day-to-day performance of the prosecution function, but the problems of professionalism and ethics are too varied to be subject to unvarying rules. Thus, the decision whether or not to follow one or more of these standards may or may not constitute an unacceptable lack of professionalism, depending on the attendant circumstances. These standards are not intended to: (a) be used by the judiciary in determining whether a prosecutor committed error or engaged in improper conduct; (b) be used by disciplinary agencies when passing upon allegations of violations of rules of ethical conduct; (c) create any right of action in any person; or (d) alter existing law in any respect.

The accompanying commentary is intended to help prosecutors understand and interpret these standards, but is not an official part of the standards. If the commentary appears inconsistent with the text of the standard, the text should guide the prosecutor's actions.

Definitions

"Jurisdiction"—Means the political area over which the prosecutor's authority extends. However, in the context of applicable laws and rules of ethical conduct, "jurisdiction" includes a state as well.

"Knows," "Has Knowledge," or "Within the Knowledge of"—Means actual knowledge.

"Misconduct"—Conduct defined as misconduct by the relevant Rules of Ethical Conduct.

"Prosecutor"—Unless otherwise specifically indicated, means any person performing the prosecution function.

"Rules of Ethical Conduct"—Refers to rules of professional conduct, rules of attorney conduct, rules of professional responsibility, or codes of attorney conduct as adopted by the various states or jurisdictions to regulate attorney conduct. The term does not refer to the ABA Model Rules of Professional Conduct.

"Special Prosecutor"—Means any person who performs the prosecution function in a jurisdiction who is not the chief prosecutor elected or appointed in the jurisdiction, or an assistant or deputy prosecutor in the jurisdiction.

Part I. General Standards

1. The Prosecutor's Responsibilities
2. Professionalism
3. Conflicts of Interest
4. Selection, Compensation, and Removal
5. Staffing and Training
6. Prosecutorial Immunity

1. The Prosecutor's Responsibilities

1-1.1 Primary Responsibility
The prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.

1-1.2 Societal and Individual Rights and Interests
A prosecutor should zealously protect the rights of individuals, but without representing any individual as a client. A prosecutor should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases. A prosecutor should seek to reform criminal laws whenever it is appropriate and necessary to do so. Societal interests rather than individual or group interests should also be paramount in a prosecutor's efforts to seek reform of criminal laws.

1-1.3 Full-Time/Part-Time
The chief prosecutor in a jurisdiction should be a full-time position. A full-time prosecutor, whether the chief prosecutor or otherwise, should neither maintain nor profit from a private legal practice. A chief prosecutor may serve part-time in those jurisdictions that are unable or unwilling to fund a full-time prosecutor, but while serving as a part-time prosecutor may not engage in professional conduct that is inconsistent with the need for prosecutorial independence.

1-1.4 Rules of Conduct
A prosecutor shall abide by all applicable provisions of the rules of ethical conduct in his or her jurisdiction.

1-1.5 Inconsistency in Rules of Conduct
To the extent prosecutors are bound by his or her jurisdiction's rules of ethical conduct that are inconsistent with these standards, they shall comply with the rules but endeavor to seek modification of those rules to make them consistent with these standards.

1-1.6 Duty to Respond to Misconduct
A prosecutor is obligated to respond to professional misconduct that has, will, or has the potential to interfere with the proper administration of justice:

a. Where the prosecutor knows that another person associated with the prosecutor's office has engaged, or intends to engage in professional misconduct that could interfere with the proper administration of justice, the prosecutor should address the matter in accordance with internal office procedures.
b. If the office lacks adequate internal procedures to address allegations of professional misconduct, a prosecutor who learns of the misconduct may, in the first instance, request that the person desist from engaging in the misconduct. If such a request is, or is likely to be, futile or if the misconduct is of a sufficiently serious nature, a prosecutor should report the misconduct to a higher authority within the prosecutor's office.
c. If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to remedy the misconduct, a prosecutor should report the misconduct to appropriate officials outside the prosecutor's office (to the extent permitted by the law and rules of ethical conduct of the state).
d. A prosecutor's failure to report known misconduct may itself constitute a violation of the prosecutor's professional duties.

Commentary

A prosecutor is the only one in a criminal action who is responsible for the presentation of the truth. Justice is not complete without the truth always being the primary goal in all criminal proceedings. A prosecutor is not a mere advocate and unlike other lawyers, a prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants and those members of society who have no direct interest in a particular case, but who are nonetheless affected by its outcome.

As a representative of society as a whole, a prosecutor should take an active role in the legislative process when proposals dealing with the criminal justice system are being considered. In that role, the prosecutor once again should exercise his or her independent judgment in supporting legislation in the best interest of society.

A full-time chief prosecutor confers many advantages on his or her jurisdiction. Among other advantages, the prosecutor is not distracted by a private law practice; is readily available for consultation with law enforcement officers; is more accountable to society for his or her decisions and performance; and, is not vulnerable to the various potential conflicts of interest that can plague a part-time prosecutor.

Despite those advantages, there are many part-time prosecutors in the United States. This situation is generally created by the societal preference for local accountability and control in locations where the sparse population, geographic size of the jurisdiction, budget and caseload do not warrant that the position be approached as a full-time one. The position of the standard is that the office be approached on a full-time basis insofar as that is possible in any given jurisdiction.

Whether full-time or part-time, the position should be approached as a career and not as a steppingstone or sideline. This means that the prosecutor is prepared to bring to his public duties an orientation of primacy. No matter what other activities the prosecutor is involved in, his public duties come first. Part-time prosecutors should not represent persons in criminal matters in other jurisdictions. This is because of the potential for conflicts with his or her duties as a prosecutor and because of the perception that such representation would decrease his or her dedication to the performance of prosecutorial functions.

Nearly all jurisdictions have now adopted, in some form, the ABA Model Rules of Professional Conduct. While these and other rules adopted by a minority of states have not fully addressed the special concerns of prosecutors in carrying out their public responsibilities, they are the law and rules prosecutors must follow. Therefore, it is important for prosecutors to become involved in the rule making process and to be involved in local jurisdiction processes in adopting the rules.

Using appropriate procedures and in appropriate fora, a prosecutor may challenge such code provisions believed in good faith to be unjust or inapplicable. The existence of a code or rule does not eliminate the duty of the prosecutor to seek justice and serve the public interest. In this sense, the role of the prosecutor is not always the same as other members of the bar. If a prosecutor chooses to disregard a code or rule because of a belief that his or her duty to seek justice requires the same, it should be done with the awareness that the licensing authority in the jurisdiction may well disagree with that determination.

Because the responsibility to seek justice is one borne by each individual prosecutor, one cannot turn a blind eye or a deaf ear to misconduct by another prosecutor that will or has the potential to interfere with that responsibility. To prepare for such a situation, a chief prosecutor should establish an internal office procedure to be used when necessary. In the absence of such a procedure, a prosecutor should report the misconduct to a higher authority inside the prosecutor’s office.

If, despite a prosecutor’s best efforts, no action is taken in accordance with the prior procedures to address the misconduct, a prosecutor should report the misconduct to

appropriate officials outside the prosecutor's office to the extent permitted by the law and rules of ethical conduct of the state. In the event that the prosecutor believes that action taken by a higher authority in the office is inadequate, the prosecutor should consider discussing the matter with a designated ethical advisor or a statewide ethical adviser before deciding what other action should be taken.

2. Professionalism

1-2.1 Standard of Conduct

A prosecutor should conduct himself or herself with a high level of dignity and integrity in all professional relationships, both in and out of court. Appropriate behavior includes, but is not limited to, the following:

a. A prosecutor should act with candor, good faith, and courtesy in all professional relations.

b. A prosecutor should act with integrity in all communications, interactions, and agreements with opposing counsel. A prosecutor should not express personal animosity toward opposing counsel, regardless of personal opinion.

c. A prosecutor should at all times display proper respect and consideration for the judiciary, without foregoing the right to justifiably criticize individual members of the judiciary at appropriate times and in appropriate circumstances.

d. A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel.

e. A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of proceedings. Disruptive conduct or excessive argument is always improper.

f. A prosecutor should treat witnesses fairly and professionally and with due consideration. In questioning the testimony of a witness, a prosecutor should not engage in a line of questioning intended solely to abuse, insult or degrade the witness. Examination of a witness's credibility should be limited to legally permitted impeachment techniques.

g. A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly:

- Making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel;
- Attempting to proceed in a manner that is obviously inconsistent with a prior ruling by the court;
- Attempting to ask clearly improper questions or to introduce clearly inadmissible evidence;
- Engaging in dilatory actions or tactics; and
- Creating or taking unlawful advantage of prejudicial or inflammatory arguments or publicity.

Commentary

A prosecutor's obligation to comply with the rules of ethical conduct of his or her jurisdiction is a fundamental and minimal requirement. When a prosecutor falls below that standard, he or she may expect sanctions impacting on a particular case or on the individual prosecutor.

The dignity and honor of the profession call for compliance with a higher standard of conduct—one of professionalism. This standard requires the prosecutor to bring integrity, fairness, and courtesy into all interactions, whether they are with victims, witnesses, law enforcement officers, opposing counsel, the court, jurors, or defendants.

This standard follows the lead of many state and local bar associations that have created codes of professionalism. It should used to inspire and invigorate all prosecutors, from the recently admitted to the very experienced, as all can be affected by the stress of the situations encountered by prosecutors. This especially applies in litigation, where emotions run highest, and the adversary setting generates a competitive orientation. While professionalism is a word of elusive definition, the standard lists a number of types of conduct that must be considered. It is strongly recommended that wherever prosecution adopts and abides by a code of professionalism, the defense bar should reciprocate.

3. Conflicts of Interest

1-3.1 Conflict Avoidance
A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office.

1-3.2 Conflicts with Private Practice
In jurisdictions that do not prohibit private practice by a prosecutor:

a. The prosecutor in his private practice should not represent clients in any criminal or quasi-criminal related matters, regardless of the jurisdiction where the case is pending;

b. The prosecutor should avoid representing to private clients or prospective clients that the status of a prosecutor could be an advantage in the private representation;

c. The prosecutor should not indicate his or her status as a prosecutor on any letterhead, announcement, advertising, or other communication involved in the private practice, and should not in any manner use the resources of the prosecutor's office for the purpose of such non-prosecutorial activities;

d. The prosecutor should excuse himself or herself from the investigation and prosecution of any current client of the prosecutor and should withdraw from any further representation of that client.

1-3.3 Specific Conflicts

In all jurisdictions, including those prohibiting private practice by prosecutors:

a. The prosecutor should excuse himself or herself from the investigation and prosecution of any former client involving or substantially related to the subject matter of the former representation, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

b. The prosecutor should excuse himself or herself from the investigation and prosecution of any matter where information known to the prosecutor by virtue of a prior representation and subject to the attorney-client privilege would be pertinent to the criminal matter, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

c. The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.

d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.

e. If an assistant or deputy prosecutor learns of the potential of a specific conflict, he or she should immediately report the matter to the chief prosecutor or a designee thereof.

1-3.4 Conflict Handling

Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and

b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office.

1-3.5 Special Prosecutors

Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of a "special prosecutor," or refer the matter to the appropriate governmental authority as required by law. Under those circumstances where a special prosecutor is appointed:

a. The special prosecutor should be a member of the state bar in good standing, with appropriate experience in the subject matter of the appointment, and should be perceived as having sufficient detachment from the prosecutor's office so as not to be influenced by any actual or potential conflict;

b. The special prosecutor should have the authority only over the case or cases for which he or she is appointed; and
c. Subject to the need to avoid the appearance of a conflict, a chief prosecutor and his or her assistants and staff should give all appropriate assistance, cooperation, and support to a special prosecutor.

Commentary

There are few topics of ethical orientation more pervasive than conflicts of interest. Conflicts may arise not only from relationships with current or former clients, but also with a prosecutor's other activities—financial or otherwise.

Conflicts of interest problems are founded on the premise of the inability to serve two masters with foreseeable different interests that compete or contend.

Conflicts present themselves differently to the prosecutor, compared to the private practitioner, because the prosecutor does not initially select those subject to prosecution. Nor is there usually a choice of which prosecution office should proceed.

The standards recognize potential conflicts in all jurisdictions involving former clients or information obtained by virtue of former representation, and allow the prosecutor to proceed on the case only if the individual makes a counseled waiver permitting the prosecutor's involvement.

The extent to which firewalls and filters may be used depend upon the size of the office and jurisdiction, the media coverage of the matter, the type of matter concerned, and the position of the conflicted prosecutor in the office. If such methods are or are likely to be ineffective, the chief prosecutor should seek a qualified special prosecutor and offer appropriate assistance.

4. Selection, Compensation, and Removal

1-4.1 Qualifications
At the time of filing for election, appointment, or hiring, and for the duration of the term of office or employment, a prosecutor shall be a member in good standing of the state's bar, except as otherwise provided by law. Chief prosecutors should be residents of the jurisdiction that they serve.

1-4.2 Compensation; Responsibilities of the Chief Prosecutor
Chief prosecutors should be compensated commensurate with their responsibilities. The salary of the full-time chief prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction in the chief prosecutor's district and should not be lowered during a term of office. Factors that should be considered in determining compensation include, but are not limited to:
a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

1-4.3 Compensation of Assistant and Deputy Prosecutors

The compensation of the chief prosecutor should not serve as a basis for the highest compensation of assistant prosecutors. Factors that should be considered in determining compensation include, but are not limited to:

a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

In addition, factors that may not be considered in setting compensation include, but are not limited to:

a. Characteristics of the prosecutor that are irrelevant to their ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation;

b. Partisan political affiliation or activity; and

c. Revenues generated by the prosecution function—such as asset forfeitures or collection of fees.

1-4.4 Benefits

A chief prosecutor should seek to ensure that all assistant attorneys have access to a benefits program commensurate with their responsibilities. These benefits should include indemnification or insurance to pay all costs of defense against, and judgments rendered in, civil lawsuits arising from the prosecutor's performance of his or her official duties.

1-4.5 Workload

Except in extraordinary circumstances, a prosecutor should not maintain, and should not be asked to maintain, a workload that is inconsistent with the prosecutor's duty to ensure that justice is done in each case.

1-4.6 Removal

A chief prosecutor shall hold office during his or her term of office and shall only be removed by procedures consistent with due process and governing law. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

1-4.7 Discharge of Assistant and Deputy Prosecutors

Assistant and deputy prosecutors are subject to removal according to the laws of their jurisdictions and the procedures in their offices. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

Commentary

Given the preference for involvement with the represented community, the need to be available for consultation with law enforcement personnel, and the need to be available in the event of an emergency or unusual situation, the chief prosecutor should be a resident of his or her jurisdiction. Even though, in some jurisdictions, disbarment of the prosecutor would not disqualify him or her from holding the office, the public interest would dictate resignation in that situation.

Provision of an adequate salary is an absolute necessity if the office of prosecutor is to function at maximum efficiency. An adequate salary is essential for attracting capable candidates to the position of prosecutor. Without such compensation, capable persons who might otherwise be attracted to the prosecutor's office are diverted to private practice of law or other endeavors.

The salary provided the prosecutor should be at least that of the salary of the judge of general trial jurisdiction in the district of the prosecutor. As noted by the National Advisory Commission on Criminal Justice Standards and Goals, Courts 230 (1973):

> For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is therefore reasonable that the compensation for the holders of these offices have the same base.

Provision for an adequate salary level is also essential to reduce the rapid turnover of local prosecutors. The skills and judgment required by a prosecutor are developed with time and experience. To retain the best representatives of the people, the salary and benefits exchanged for services must be commensurate with the salary and benefits available in other areas for the expertise developed. Without the ability to earn a salary sufficient to justify remaining in the prosecutor's office, the office becomes a training ground for private practitioners and the people are denied the best representation.

A prosecutor has the responsibility to seek justice in every case. Ensuring that a matter has been properly investigated and evaluating how it should be handled are time

consuming. In those cases that go to trial, the preparation required to proceed effectively is filled, in many instances, with education regarding experts in various fields and creation of technological presentations and exhibits which are increasingly necessary to effectively explain the prosecution's theory of the case.

Because of the need to thoroughly investigate, evaluate, prepare and try a variety of cases, prosecutors should not be overwhelmed by large numbers of cases needing disposition. If they are, the quality of representation afforded the people suffers and the difficulty in retaining good, experienced prosecutors increases.

Without addressing specific reasons for the removal from office of the chief prosecutor or assistant prosecutors, the standard requires that such actions be subject to procedural due process. Equally important is the necessity that such removals not be undertaken because of prejudice against the prosecutor's race, gender, religion, national origin or sexual orientation.

Engaging in partisan political activities, or the refusal to engage in the same should not be a basis for removal unless the activity interferes with the efficient operation of the office.

Prosecutors should be mindful of their responsibility to seek justice. Should a prosecutor find himself or herself in a situation in which the public trust in the office has diminished to the extent that he or she can no longer fulfill that primary responsibility, resignation should be considered.

Given the litigious nature of some persons involved in the criminal justice system, a program providing indemnification or insurance to pay all costs incurred by the prosecutor in defending against civil lawsuits and in paying judgments arising from the performance of his or her official duties is essential. That benefit will enable a prosecutor to seek justice despite the threats of civil litigation that, even if totally unfounded, can consume time and resources to defend.

5. Staffing and Training

1-5.1 Transitional Cooperation
When an individual has been elected or appointed prosecutor, the incumbent prosecutor should, when practicable, fully cooperate in an in-house orientation of the incoming prosecutor to allow for an effective transition consistent with the principles of professional courtesy. This cooperation may include, when possible, designating the incoming prosecutor a special assistant prior to the time the incoming prosecutor assumes office, so that the incoming prosecutor may be briefed on significant ongoing proceedings and deliberations within the office, including grand jury or other investigations.

1-5.2 Assistant and Deputy Prosecutors

Assistant and deputy prosecutors, by whatever title, should be selected by the chief prosecutor and should serve at the chief prosecutor's pleasure, unless otherwise provided by law or contract.

a. Assistant and deputy prosecutors should be active members of the state bar in good standing, except as otherwise provided by law.

b. Assistant and deputy prosecutors should be selected on the basis of their achievements, experience, and personal qualifications related to their ability to successfully perform the work of the prosecutor's office. Personal or political considerations that have no legitimate bearing on the ability to perform the required work should not play a role in the hiring, retention, or promotion of assistant and deputy prosecutors.

c. Absent unusual circumstances, a chief prosecutor should seek a commitment for a minimum number of years of employment at the time of hiring or promoting assistant or deputy prosecutors, conditioned upon continuing good performance.

1-5.3 Orientation and Continuing Legal Education

At the time they commence their duties and at regular intervals thereafter, prosecutors should participate in formal training and education programs. Prosecutors should seek out continuing legal education opportunities that focus specifically on the prosecution function and:

a. Chief prosecutors should ensure that all prosecutors under his or her direction participate in appropriate training and education programs. Chief prosecutors should also be knowledgeable of and make use of appropriate national training programs for both orientation and continuing legal education for both himself or herself and the prosecutors in his or her office.

b. Chief prosecutors should participate in training programs sponsored by a state or national association or organization.

c. Prosecutors with supervisory responsibilities should include in their continuing training the study of management issues, such as staff relations and budget preparation.

d. The chief prosecutor should ensure that each new prosecutor becomes familiar with these standards, as well as rules of ethical conduct and professionalism that have been adopted in the jurisdiction.

e. Chief prosecutors should identify one or more sources, both within and outside the office, to which the prosecutors can turn for guidance on questions related to ethical conduct and professionalism.

f. Prosecutors should be diligent in meeting or exceeding requirements for continuing legal education in those jurisdictions where the requirements are mandatory.

g. Adequate funds should be allocated in the prosecutor's budget to allow for both internal training programs and attendance at external training events.

1-5.4 Office Policies and Procedures
Each prosecutor's office should develop written and/or electronically retrievable statements of policies and procedures that guide the exercise of prosecutorial discretion and that assist in the performance of those who work in the prosecutor's office.

Commentary

Criminal investigations, trial preparation, trials, and the day-to-day operation of the prosecutor's office do not coincide with election cycles. Therefore it is important for the efficient representation of the people that the transition from one prosecutor's term to another's be as seamless as possible. Because of the confidential character of much of the activity in a prosecutor's office, it may be that the most appropriate manner in which to orient an incoming chief prosecutor is through his or her appointment as a special prosecutor, so that briefings on confidential matters can be accomplished. It is important for both the outgoing and incoming prosecutors to remember that his or her responsibility to seek justice for the people of the community may require the setting aside of campaign differences in a professional manner.

In selecting assistant or deputy prosecutors, the chief prosecutor, in addition to confirming that the prospective prosecutors are members in good standing of the bar of the jurisdiction, when appropriate, should carefully examine the assets they would bring to the office. An assessment of their educational background, work experience, judgment, written and oral communication skills, trial advocacy skills and other personal qualifications without regard to who they know should form the basis for hiring, promotion and retention decisions.

It is desirable for the chief prosecutor to require a minimum commitment from all assistant or deputy prosecutors. This period may be lengthened or shortened within the discretion of the chief prosecutor. Because many prosecutors are hired immediately after law school they require an extended period of training and experience before they can deliver their best work for their client. Therefore the time commitment assures that the prosecutor's office receives some benefit for the time and resources spent on the training process. Even for those prosecutors entering the office with some other relevant experience, the transition from another type of practice to prosecution takes some time. In addition, in some instances the time required for potential conflicts of interest to lessen and allow for the new prosecutor to function fully will justify the commitment requirement.

It is the responsibility of the prosecutor to hire staff that reflects the composition of the community, where possible. The recruitment of qualified minorities is an essential aspect of this goal and should be incorporated into the hiring practices and procedures of all prosecution offices. While it is not the responsibility of the prosecutor to meet predetermined quotas, the office benefits by strong representation that reflects the community that is served.

Conceptually, staff training can be divided into two broad categories. The first, which might be termed “orientation,” would seek to provide new assistants or deputies, as well as chief prosecutors, with an understanding of their responsibilities in the criminal justice system, and with the technical skills they will be required to utilize. Orientation for the chief prosecutor should center on office management skills, especially for larger jurisdictions. A basic orientation package for assistants could include familiarization with office structure, procedures, and polices; the local court system; the operation of local police agencies; and training in ethics, professional conduct, courtroom decorum, and relations with the court and the defense bar.

A second aspect of training which should be included in each prosecutor’s training program is continuing education. First and foremost, the prosecutor must abide by any continuing legal education requirements of his or her jurisdiction. The content of the training should be relevant to the duties of the prosecutor. For the chief prosecutor and other prosecutors in management positions, training on personnel, management and budget issues would be appropriate. For other prosecutors, concentration on substantive law, rules of evidence, forensic evidence, trial advocacy, and other matters relevant to their duties should be sought. While some of the largest offices have training divisions which can provide much of the training needed, the chief prosecutor should be cognizant that it is important to have exposure to what is going on throughout the national criminal justice community. Prosecutors benefit from this exposure because it allows them to stay current regarding new defenses, jointly address concerns confronting prosecutors, and learn techniques that can improve their ability to seek justice for their communities.

In addition to providing opportunities for prosecutors to learn the information and skills required to perform their duties, the chief prosecutor must be diligent in requiring his or her prosecutors to be thoroughly familiar with his or her rules of ethical conduct and professional responsibilities. At an absolute minimum, the chief prosecutor must ensure that all prosecutors in his or her office have a working knowledge of the ethical rules and professional codes applicable to the jurisdiction as well as these standards. In addition, the chief prosecutor should work to create an atmosphere in which the discussion of ethical and professional considerations is encouraged. The chief prosecutor should also make known persons and procedures that can be utilized if more private consultation is desired.

By calling for the allocation of funds in the prosecutor’s budget, this standard may help to emphasize the essential role of training in assuring efficient and effective performance of prosecutorial duties while disabusing the notion that training is a frill or an extra to be cut at the first sign of any pressure on the budget.

A primary benefit of drafting written policies and procedures is uniformity. The prosecutorial discretion that has been recognized in many of the standards most correctly belongs to the chief prosecutor only, being the elected official ultimately responsible to the community for the performance of the prosecution function. In promoting uniformity, the emphasis is on assuring that assistant prosecutors and other personnel perform in a manner consistent with the policy of the chief prosecutor. Given that the individual

assistants must be delegated the authority to apply their best judgment to the facts of particular cases, achieving the goal of uniformity protects a victim or accused from receiving substantially different treatment because the case was assigned to one individual in the office and not to another.

It is recognized that a distinction exists between the operation of a small office and a large office. In a small office, the long personal association of a prosecutor's staff will have created a completely shared understanding of the tenets of each prosecutor's individual policies. In those cases, the written policy may serve as no more than a cross-reference and as a guard against any misunderstanding. Thus, it may not always be necessary for the statement of policies and procedures of a small office to be as detailed as that of a large office. However, in a larger office, where there is frequent staff turnover and a variety of staff positions, or where assistants serve part-time and operate in widely separated locales within the jurisdiction, the office statement of policies and procedures should represent an enormous stride toward uniformity and continuity in the execution of prosecutorial discretion.

Another benefit in the adoption of office policies and procedures will be a more effective orientation and training of new staff. A new attorney, paralegal, clerical employee, or intern may bring to the job little or no experience in the operations of a prosecutor's office. No matter what the size of the office, existing staff may already be overburdened, with little or no time to devote to thorough training of new employees. Even taking the time to explain to an individual his duties may not adequately convey them, given the amount of information to be assimilated. Written explanation of policy and office procedure can serve as an extremely valuable reinforcement to oral instruction and as a constant guide and reference to an individual during employment in the office.

An additional benefit to be derived from the adoption of written office policies and procedures can be improvement of the knowledge and technical proficiency of staff members in performing the various tasks required in the prosecutor's office. A portion aimed at clerical staff could explain how and when various office forms are to be utilized, and give instruction on the operation of office filing and statistical systems. Items of more relevance to professional legal personnel could detail the steps to be followed in approving a warrant, interviewing a witness, filing a motion, etc. Other sections might even give precise directions as to how to conduct a voir dire, jury trial, grand jury proceeding, or preliminary hearing. Even where information is already available in one format in the office, such as state criminal codes or reported court decisions, this information can be reorganized or restructured for easier access and practical use.

Because of the confidential character of the prosecutor's office work, the prosecutor may conclude that not all portions of the written policies and procedures should be accessible to the public, or that separate works be available—one for internal management and another for public information.

Prosecutors without statements of policies and procedures should consult with their local, state, and national associations and other prosecution offices to lessen the burden of the initial development.

6. Prosecutorial Immunity

1-6.1 Scope of Immunity
When acting within the scope of his or her prosecutorial duties, a prosecutor should enjoy the fullest extent of immunity from civil liability. The chief prosecutor should take steps to see that all costs, including attorneys' fees and judgments, associated with suits claiming civil liability against any prosecutor within the office arising from the performance of their duties should be borne by the prosecutor's funding entity.

Commentary

In *Imbler v. Pachtman*, 424 U.S. 408 (1976), the U.S. Supreme Court ruled that prosecutors enjoy absolute immunity from Civil Rights Actions brought under Section 1983, 42 U.S.C., when acting within the scope of their duties in initiating and pursuing a criminal prosecution and in presenting the state's case. The Court noted that although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would outweigh the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system.

The Court did not extend such absolute immunity to actions taken by a prosecutor outside of the scope of his or her duties as aforesaid. Thus, *Imbler* did not change pre-existing law with respect to the performance of duties that traditionally are viewed as investigative duties falling primarily within the police function.

Although there has been a multitude of case law subsequent to *Imbler* discussing the prosecutor's immunity for "administrative" and "investigative" duties, no bright line rule has been established.

In order to ensure that prosecutors are free to vigorously and fearlessly perform their essential duties, the prosecutor's funding source should provide the costs, including attorney fees and judgments associated with civil suits against the prosecutor and his or her staff. No prosecutor should be expected to function without full coverage for actions arising out of the performance of his or her duties.

Part II. Relations

1. Relations with Local Organizations

2-1.1 Chief Prosecutor's Involvement
The chief prosecutor should be involved in local entities established and maintained in his or her jurisdiction for the purpose of enhancing the effectiveness, efficiency, and fairness of the administration of criminal justice, to the extent practicable and to the extent the prosecutor reasonably believes such entities are legitimately committed to protecting public safety. The obligations a prosecutor undertakes on behalf of community organizations should extend only to those that he or she can fulfill in a diligent and competent manner.

2-1.2 Information Input
To the extent permitted by law, the chief prosecutor should provide such criminal justice entities with information, advice, and data pertinent to the solution of problems identified in the jurisdiction, and should consider the implementation of appropriate proposals designed to address and resolve such problems.

2-1.3 Organization Establishment
In those jurisdictions where there are no local inter-agency entities established for the enhancement of the effective, efficient, and fair administration of criminal justice, the chief prosecutor should determine the potential benefits of such organizations and, if deemed beneficial, provide leadership in their establishment.

2-1.4 Community Prosecution
The chief prosecutor should be mindful of opportunities to engage school officials, community youth organizations, social service agencies, neighborhood crime watch groups, and other such organizations with law enforcement agencies, including the prosecutor's office, in efforts to prevent and detect crime.

2-1.5 Enhancing Prosecution
The chief prosecutor should participate in state and local bar associations for the purpose of enhancing and advancing the goals of the prosecution function in the legal community.

2. Relations with State Criminal Justice Organizations

2-2.1 Need for State Association
Each state should have a professional association of prosecuting attorneys for the purpose of serving and responding to the needs of its membership and enhancing the prosecution function. The chief prosecutor should be an active member of his or her state association and should allow his or her assistants and deputies to be members of and participate in the state association. Each state association should provide services that are most conducive to development at the statewide level, including, but not limited to, the following:

a. Continuing legal education;
b. Training of newly-elected prosecutors and their staffs;
c. Management training;
d. Support for in-house training programs;
e. Information dissemination (newsletters, bulletins, etc.);
f. Sharing transcripts of testimony of defense experts for purposes of cross-examination;
g. Technical assistance in planning, management, litigation, and appeals, including the maintenance of data and brief banks;
h. Promulgating model office policies and procedures;
i. Coordinating resources not otherwise available or frequently used;
j. Monitoring legislative developments and drafting model legislation;
k. Maintaining liaisons between the offices of various prosecutors;
l. Developing innovative programs; and
m. Developing and monitoring computer systems.

2-2.2 Enhancing Prosecution
The chief prosecutor should participate, to the extent possible, in statewide committees, task forces and other entities for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in statewide entities should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

3. Relations with National Criminal Justice Organizations

2-3.1 Enhancing Prosecution
The chief prosecutor should take an active role, to the extent possible, in national criminal justice organizations that exist for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in national organizations should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

2-3.2 Prosecutorial Input
The chief prosecutor should seek to ensure that national criminal justice organizations undertake all reasonable measures to include the substantial involvement and views of incumbent state and local prosecutors in the research and studies and promulgation of standards, rules, and protocols that impact on the prosecutor and the prosecution function.

Commentary

The prosecutor should participate in local, state, and national affairs for the improvement of the criminal justice system. Activities that the prosecutor might undertake include provisions of information and advice to governmental bodies and citizens' groups, review and consideration of pending state and national legislation, and participation in criminal justice-related programs or projects. A good prosecutor is a good attorney and would be expected to be active in his local and state bar associations.

The standards recognize the rapid growth in community organizations in the last 20 years devoted to specific interests, such as DUI enforcement, rape prevention/counseling programs, spousal and child abuse prevention, drug education programs, and neighborhood watch programs, to name just a few. An interested and informed citizenry can be a valuable partner in law enforcement. The standards encourage prosecutors in communities lacking such grass-roots organizations to consider appropriate ways and means whereby citizen interest in their formation can be stimulated.

Because the office of the prosecutor is a local one, the responsibilities placed on this office are probably more diverse than those at any other level of government which may have the capacities for specialization. For example, citizen complaints may range from how to cope with a neighbor's children to how to collect on a bad check. Expectations from law enforcement agencies and the courts are equally diverse and more demanding. In many jurisdictions, the prosecutor is also the attorney for his county. This responsibility may demand an expertise in taxation, school law, zoning, property law, employee disciplinary law, health law, environmental law, and labor relations.

If every prosecutor's office were designed on a level of specialization necessary to address each area it is responsible for, it would not only be a tremendous (and no doubt prohibitive) financial burden, but also an enormous duplication of effort on a county-by-county or district-by-district basis. On the other hand, local initiative, flexibility, and

accountability are essential factors that must be maintained in prosecution. Thus, one method of alleviating this problem is through a statewide association of prosecuting attorneys, a concept that NDAA has long fostered.

Such an association should be made up of all local prosecutors in a state and should have a full-time staff. This organization must be responsive to the needs of its members. As a result, the various functions will differ. However, those areas of concentration may include those items set forth in the standard.

Because the purpose of such an association is to serve prosecutors, it is imperative that they be involved and support the operation of the association. Membership should be the responsibility of all prosecuting attorneys, and dues should be paid through the prosecutor's budget. Membership should not be limited to chief prosecutors but should be open to assistants as well.

In addition, prosecutors who recognize the value of the functions of their state bar associations and prosecutors' associations should be willing to commit time in volunteer support, such as serving on committees.

Likewise, the locally-elected prosecutor and his staff should participate in and support their national organization for the advancement of the interests of effective law enforcement. The organization provides a forum for the local prosecutor that no other organization can and an effective voice in national legislative and policy-making activities. The programs of training, publications, technical assistance, and focused activities (such a drug enforcement, child abuse enforcement, environmental law enforcement, etc.), provide the local prosecutor with a perspective that reaches beyond the state level. The failure of local prosecution to be active in local, state, and national associations will result in the advancement of competing entities. At the same time, it is important that prosecutors not volunteer their time unrealistically and are able to meet the demands of their undertakings.

4. Relations with Other Prosecutorial Entities

2-4.1 Prosecutorial Cooperation

In recognition of their mutual goal of serving the interests of justice, the prosecutor should cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases that may be of common concern to their respective offices.

2-4.2 Coordinated Prosecutions

The prosecutor should establish procedures for ascertaining, to the extent possible, the likelihood that the defendant will be investigated and/or prosecuted by other jurisdictions for similar conduct, and coordinate prosecutions with the relevant prosecutorial agencies, in order to avoid unnecessarily duplicative investigations and/or prosecutions and to avoid impediments to prosecution such as defense claims of double jeopardy or grants of immunity.

2-4.3 Resource Sharing
The prosecutor should share resources and investigative information with other prosecutorial entities, when permitted by law and to the extent necessary, to ensure the fullest attainment of the interests of justice, without regard to political affiliation or partisan interest.

2-4.4 Duty to Report Misconduct
When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, he or she should report that information in accordance with Standard 1-1.6. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the chief prosecutor should report such conduct to the supervisor of the other prosecutorial entity. When the chief prosecutor has direct knowledge of a violation of the rules of ethical conduct by a prosecutor in another office, he or she shall also report such ethical misconduct to the appropriate bar disciplinary authority in the relevant jurisdiction, provided such misconduct raises a substantial question as to the prosecutor's fitness to practice law.

2-4.5 Furtherance of Justice
The office of the prosecutor and the office of the state attorney general, where separate and distinct entities, should cooperate whenever practicable in the furtherance of justice.

2-4.6 Attorney General Assistance
In those states where the attorney general has criminal law responsibilities, the state attorney general may assist in local prosecutions at the request of the local prosecutor or otherwise as authorized by law. The state attorney general may also, when requested, play a role in mediating between local prosecutors when the possibility arises of prosecution in multiple jurisdictions, if such mediation is necessary to avoid injustice or the inefficient use of law enforcement resources.

Commentary

Every prosecutor, regardless of jurisdiction, has the responsibility to seek justice. Given our highly mobile society and the increasing methods by which crimes are committed, the quest for justice must sometimes cross jurisdictional lines. For that reason and to fully comply with their primary responsibility, prosecutors at all levels should cooperate to the fullest extent possible. Such cooperation can result in more efficient and effective investigations, the avoidance of double jeopardy claims, and a fuller awareness of the consequences of grants of immunity.

With increased cooperation, there is the increased possibility of a prosecutor gaining knowledge of another prosecutor's misconduct or incompetency. Just as one cannot turn a blind eye or deaf ear to such conduct in one's own jurisdiction, a prosecutor cannot ignore misconduct in another. The standard outlines the required course of action.

Intervention by the attorney general that is not requested is not likely to foster necessary, positive working relations. The standard recommends that intervention by the state attorney general be only at the request of the local prosecutor. The major burden of law enforcement in America falls upon local law enforcement, and it is to the local chief prosecutor that such agencies turn for the prosecution of their cases and the initiation of investigations.

5. Relations with Law Enforcement

2-5.1 Communications
The chief prosecutor should actively seek to improve communications between his or her office and other law enforcement agencies. The prosecutor should prepare and encourage the use of uniform information sharing systems by all criminal investigative agencies within his or her jurisdiction.

2-5.2 Case Status Advisements
When it is practical to do so, the chief prosecutor should keep local law enforcement agencies informed of cases in which they were involved and provide information on those cases in order to aid law enforcement officers in the performance of their duties.

2-5.3 Law Enforcement Training
The chief prosecutor should encourage, cooperate with and, where possible, assist in law enforcement training. The prosecutor should also urge local law enforcement officers to participate in national, state, and regional training courses available to them.

2-5.4 Prosecution Assistance in Training
The chief prosecutor should assist in the on-going training of law enforcement officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies within their jurisdiction with recent court decisions, legislation, and changes in the rules of criminal procedure.

2-5.5 Liaison Officer
The chief prosecutor should request that each major law enforcement agency within his or her jurisdiction assign at least one officer specifically to the prosecutor's office. That officer should serve as a liaison between offices, and should be available to perform the duty of informing concerned officers within the officer's agency of the progress and disposition of criminal cases.

2-5.6 Legal Advice
Although law enforcement agencies or individual law enforcement officers are not clients in criminal cases or employees of the prosecutor's office, the prosecutor may provide independent legal advice to local law enforcement agencies concerning specific prosecutions. This advice may include the proper interpretation of the criminal laws, the sufficiency of evidence to commence criminal charges or arrest, the requirements for obtaining search warrants for physical evidence and electronic surveillance, and similar matters relating to the investigation of criminal cases. The prosecutor should serve in

such an advisory capacity to promote lawful investigatory methods that will withstand later judicial inquiry. The prosecutor should encourage law enforcement officers to seek legal advice as early as possible in the investigation of a criminal case. Where possible, the prosecutor should identify a primary point of contact within the prosecutor's office to receive and refer legal inquiries from particular law enforcement agencies.

Commentary

The maintenance of good relations between the prosecuting attorney and the law enforcement agencies within the community is essential for the smooth functioning of the criminal justice system. Both parties have the burden of fostering, maintaining, and improving their working relationship and developing an atmosphere conducive to a positive exchange of ideas and information.

The criminal justice system, of which the police are only one element, is a structure of law. Many times this structure suffers from seemingly contradictory court decisions, public pressure, and the problems that arise in trying to balance effective law enforcement and the protection of the rights of individuals. The police face many of these problems. To alleviate these problems, the prosecutor could educate the police in the area of pre-trial criminal procedure, including search and seizure law, the arrest process, the use of force, and interrogation. In particular, with respect to the various exclusionary rules pertaining to the admissibility of evidence, the prosecutor has a responsibility to educate the police on the effect of court decisions in general and their application in specific cases where evidence was suppressed by a trial court. In performing such a function, the prosecutor must be aware of and follow the constraints imposed by duties of candor and restrictions on communication with represented persons or parties that may be included in ethical and professional codes to which they are subject.

The prosecutor has a large stake in the training and professionalization of local law enforcement. Its handling of a case is often crucial to the prosecutor's success. Therefore, the prosecutor should encourage the local police to participate to the fullest extent possible in training programs operated on state, regional, and national levels. If such a program does not exist or is not available to police in the jurisdiction, it is in the prosecutor's best interest to promote the development of such a program. Such training should result in more successful prosecutions. Besides the face value effectiveness of police training, it is an excellent opportunity to establish personal rapport and communications with individual police officers.

The prosecutor should advise the police on the legal aspects of criminal investigations. This advisory function pertains only to criminal matters and should not be confused with the function of police in-house counsel. Assuming the role of an advisor to any member of the police department on civil or personal matters is beyond the scope of the duties of the office of prosecuting attorney. In many cases, such a role would place the prosecutor in a position of possible conflict of interest with other duties prosecution is obliged to perform.

Furthermore, the prosecuting attorney may be restricted from any active participation in the police function by the threatened loss of immunity to civil damages in instances where participation is beyond the scope of advisor and, therefore, not an integral part of the judicial process. The prosecutor must always be cognizant that his quasi-judicial immunity afforded by the courts in civil liability suits is limited to actions taken in advancement of the traditional prosecution function.

The responsibility for sound communications between the prosecutor and law enforcement agencies is mutual. It is a goal of the prosecutor to keep police informed of developments in investigations, trials, and related matters. Both entities must seek to develop and implement systems and procedures that facilitate and enhance communications. One method of providing a consistent flow of information about all criminal matters is the development and use of a uniform information sharing system. Such systems ensure that all information necessary for successful investigations and prosecutions is available to all concerned parties in a timely manner.

6. Relations with the Court

2-6.1 Judicial Respect
A prosecutor shall display proper respect for the judicial system and the court at all times.

2-6.2 Respect in the Courtroom
A prosecutor should vigorously pursue all proper avenues of argument. However, such action must be undertaken in a fashion that does not undermine respect for the judicial function.

2-6.3 Improper Influence
A prosecutor should not seek to unfairly influence the proper course of justice by taking advantage of any personal relationship with a judge, or by engaging in any ex parte communication with a judge on the subject matter of the proceedings other than as authorized by law or court order.

2-6.4 Suspicion of Criminal Misconduct
When a chief prosecutor has a reasonable suspicion of criminal conduct by a member of the judiciary, the prosecutor should take all lawful investigatory steps necessary to substantiate or dispel such suspicions and, if substantiated, should initiate prosecution or refer the case to another prosecutor’s office for review or appoint a special prosecutor in the case.

2-6.5 Responsibility to Report Misconduct
When a prosecutor has knowledge of conduct by a member of the judiciary that may violate the applicable code of judicial conduct and/or that raises a substantial question as to the judge’s fitness for office, the prosecutor has the responsibility to report that knowledge to his or her supervisor or if the chief prosecutor, directly to the relevant judicial conduct authority in his or her jurisdiction.

2-6.6 Application for Recusal
When a prosecutor reasonably believes that it is warranted by the facts, circumstances, law, or rules of judicial conduct, the prosecutor may properly seek that judge's recusal from the matter.

Commentary

The prosecutor is an officer of the court, a public official accountable to those of his jurisdiction, and a hub of the criminal justice system. All of these dimensions influence the prosecutor's relations with the court.

The standard recognizes that judges, like all figures in the criminal justice system, are individuals of diverse talents, skills, and temperaments. While some are of superior character, others suffer from human frailties not uncommon in our society. Thus, while the prosecutor needs to have proper respect for the institution of the judiciary, at the same time, he has a responsibility to guard against the infrequent abuses from those who fail to honor their responsibilities while serving on the bench.

While this approach may require a delicate balance, it is necessary both inside and out of the courtroom. As is true of all National Prosecution Standards, effective justice is the paramount issue. Therefore, the prosecutor should neither undermine respect for the judicial function nor in any manner attempt to unfairly influence the court.

When judicial scandals are uncovered, they become an indictment of the entire criminal justice system, creating a public perception that all those involved in the system are corrupt. The prosecutor must assume the role of guardian against injustice and corruption. It is unacceptable to turn a deaf ear to suspicions of criminal activity or misconduct. The standard places a duty on the prosecutor to follow through with a thorough investigation when there is reasonable suspicion of criminal activity by a member of the judiciary. If the investigation dictates prosecution, the prosecutor must take the appropriate steps to see that it is commenced.

The standards make it clear that the prosecutor has responsibilities not only when misconduct is at the level of criminal activity, but also when a judge demonstrates the inability to carry out his duties with a minimal level of competence.

7. Relations with Suspects and Defendants

2-7.1 Communications with Represented Persons
A prosecutor should respect a suspect's and defendant's constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect's and defendant's constitutional right to the assistance of counsel. Notwithstanding the foregoing:

a. A prosecutor may communicate with a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.

b. A prosecutor may communicate with a witness who is also charged as a defendant in an unrelated criminal matter about the witness's upcoming testimony without the advance permission of the witness's attorney so long as the prosecutor does not discuss the criminal charges pending against the witness.

2-7.2 Communication with Unrepresented Defendants

When a prosecutor communicates with a defendant charged with a crime who is not represented by counsel, the prosecutor should make certain that the defendant is treated with honesty, fairness, and with full disclosure of his or her potential criminal liability in the matter under discussion.

a. A prosecutor should identify himself or herself to the defendant as a prosecutor and make clear that he or she does not represent the defendant. If legally required under the circumstances, the prosecutor should advise the defendant of his or her rights.

b. If a prosecutor is engaged in communications with a charged defendant who is not represented by counsel and the defendant changes his or her mind and expresses a desire to obtain counsel, the prosecutor should terminate the communication to allow the defendant to obtain counsel or to secure the presence of counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.3 Unsolicited Communications

A prosecutor may receive, accept and use unsolicited written correspondence from defendants, regardless of whether the defendant is represented by counsel. If the prosecutor does not know that the defendant is represented by counsel, a prosecutor may receive unsolicited oral communications from defendants, of which he or she has no advance notice, without any duty of first ascertaining whether or not there is a valid reason for the communication or whether or not the defendant is represented by counsel. However, the situation may arise where a defendant who has been charged with a crime is represented by counsel, but requests to communicate with a prosecutor on the subject of the representation out of the presence of his or her counsel. Before engaging in such communication, the prosecutor should first ascertain whether the defendant has expressed a valid reason to communicate with the prosecutor without the presence of his or her attorney, and if so should thereafter communicate with the defendant only if authorized by law or court order.

2-7.4 Plea Negotiations

If a prosecutor enters into a plea negotiation with a defendant who is not represented by counsel, he or she should seek to ensure that the defendant understands his or her rights, duties, and liabilities under the agreement. When possible, the agreement should be reduced to writing and a copy provided to the defendant. The prosecutor should never take unfair advantage of an unrepresented defendant. The prosecutor should not give legal advice to a defendant who is not represented by counsel, other than the advice to secure counsel.

2-7.5 Right to Counsel
If a prosecutor is engaged in communications with a defendant who is not represented by counsel or whose counsel is not present, and the defendant changes his mind and expresses a desire to obtain counsel or to have counsel present, the prosecutor should terminate the communication in order to allow the defendant to obtain counsel or to secure the presence of his or her counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.6 Communications with Represented Persons During Investigations
A prosecutor performing his or her duty to investigate criminal activity should neither be intimidated nor discouraged from communicating with a defendant or suspect in the absence of his or her counsel when the communication is authorized by law or court rule or order. A prosecutor may advise or authorize a law enforcement officer to engage in undercover communications with an uncharged, represented suspect in the absence of the suspect's counsel, provided such a communication is authorized by law or court order.

Commentary

Relations with defendants is a sensitive area of a prosecutor's function. There must be a balancing of the general desirability to have defendants represented by counsel in their dealings with prosecutors and the right of defendants to represent themselves in traffic cases and minor misdemeanors, and even in felonies or serious misdemeanors under certain circumstances.

The standard recognizes that prosecutors are sometimes contacted by defendants without the knowledge of their counsel and give good reasons for their direct communications with the prosecutor. For example, a defendant may express that his attorney was hired by another person with an interest in keeping him quiet, to his legal detriment. In drug cases where couriers are caught transporting large amounts of drugs or cash, defendants may have attorneys appear, bail them out, and begin representation without the express authority of the defendant. Defendants complain that these attorneys are working for other interests, but they are afraid to discharge them because of actual or assumed danger. Similarly, a defendant may be the officer, employee, or agent of a corporation and face individual charges in addition to those against the corporation, where counsel for the corporation represents that he is also counsel for the individual. This situation may exist without the individual's knowledge or without the individual's knowledge of an inherent conflict of interest in the representation.

Prosecutors must be aware that in dealing with represented defendants, there are not only constitutional limitations on their communications, but also, in most jurisdictions, there are limitations imposed by ethical rules, which generally cannot be waived by the represented defendant. That being said, prosecutors may have the right under some uncommon circumstances to communicate with a represented defendant without prior knowledge or presence of his or her attorney. In these and other circumstances, prosecutors might be advised to seek authority from the court or the appointment of "shadow counsel" to interview the defendant and report to the court concerning what

action might be appropriate. Some jurisdictions may provide other legal avenues that a prosecutor might use in such circumstances.

Prosecutors also often receive unsolicited letters from defendants. They should have the right to receive them and use them in any legal manner.

The standard provides that prosecutors communicating with unrepresented defendants should be certain that they are treated fairly and that defendants be made aware of what could happen to them as the result of whatever actions are taken. For example, suppose a defendant wishes to become a witness for the state in return for a recommendation by the prosecutor that he receive a suspended sentence. The prosecutor must make it known that he cannot guarantee the desired sentence but can only make a recommendation (if that be the case) and that the defendant might indeed be sentenced to a jail term, even with his cooperation on behalf of the state. If local rules or the legal circumstances require *Miranda*-type warnings be given, the prosecutor should so advise the defendant before any conversation. The standard assumes that a prosecutor will tell a defendant if he intends to use the communications against him. There are circumstances in which a prosecutor will agree to receive information from a defendant but not use it against him. However, to ensure fairness to an unrepresented defendant, he should not be subjected to the liability of incriminating statements without a prior warning and waiver of rights.

The standard recognizes that many defendants wish to negotiate a plea with the prosecutor without representation. Many such defendants are experienced with the system or do not wish the expense of representation. In these circumstances, the prosecutor is held to full disclosure of the defendant's liabilities and a standard of fairness. The prosecutor should make certain that a defendant receives as favorable a disposition as he would have had had he been represented in the circumstances. The desirability of written plea agreements is also noted. The standard recognizes the general legal requirement of fulfilling a defendant's desire for counsel—even if he originally expressed a desire not to be represented or to have counsel present and assisting him—or to obtain counsel if he cannot afford to pay for representation. The defendant's wishes in this regard are recognized as paramount. The prosecutor should make a record of any communications with represented defendants that take place in the absence of counsel.

Prosecutors have a duty to investigate criminal activity. This may involve communicating with witnesses who are also defendants or suspects in unrelated cases. Ordinarily such communications must be made with the approval of the witness/defendant's counsel because the witness is seeking some benefits in the "subject matter of the representation." Whenever a witness/defendant seeks any benefit in his own case, the communication does involve the "subject matter of the representation," and counsel must be included. In circumstances that remain completely unrelated to the witness/defendant's case (the subject of the representation), a communication may be "authorized by law" even though counsel was not consulted. In circumstances involving "undercover" investigations of an uncharged but represented suspect, a prosecutor can advise police officers to communicate with the suspect so long as the communication is specifically "authorized by law."

In some jurisdictions, these standards may be inconsistent with case precedent and/or rules of professional conduct. The prosecutor must proceed with caution and seek to avoid any action that would jeopardize the case or result in misconduct under applicable rules.

8. Relations with Defense Counsel

2-8.1 Standards of Professionalism
The prosecutor should comply with the provisions of professionalism as identified in Standard 1-2.1 in his or her relations with defense counsel, regardless of prior relations with or animosity toward the attorney. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel.

2-8.2 Propriety of Relations
In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relations.

2-8.3 Cooperation to Assure Justice
The prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

2-8.4 Disclosure of Exculpatory Evidence
The prosecutor shall make timely disclosure of exculpatory or mitigating evidence, as required by law and/or applicable rules of ethical conduct.

2-8.5 Suspicion of Criminal Conduct
When a prosecutor has reasonable suspicion of criminal conduct by defense counsel, the prosecutor has a responsibility to take such action necessary to substantiate or dispel such suspicion.

2-8.6 Responsibility to Report Ethical Misconduct
When an assistant or deputy prosecutor has knowledge of ethical misconduct by defense counsel that raises a substantial question as to the attorney's fitness to practice law, the prosecutor should report such conduct to his or her supervisor. A chief prosecutor who has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law should report such conduct directly to the appropriate bar disciplinary authority in his or her jurisdiction. When such misconduct occurs during the course of litigation, the prosecutor should also report it to the judge presiding over the case or to his or her supervisor, if required by office policy, and may seek sanctions as appropriate.

2-8.7 Avoiding Prejudice to Client
When the prosecutor believes that the defense counsel has engaged in misconduct, remedial efforts should be directed at the attorney and not at his or her client. The prosecutor should at all times make efforts to ensure that a defendant who is not involved in misconduct is not prejudiced by the unlawful or unethical behavior of his or her attorney.

Commentary

As with the judiciary, appropriate professional consideration is due opposing counsel. All actions directed at opposing counsel and all deliberations with opposing counsel should be conducted with candor and fairness and should be presented without any express or implied animosity or disrespect. The prosecutor should strive to maintain uniformity of fair dealing with all defense counsel and should endeavor to not allow any prior animosity or bad feelings toward a particular defense attorney to work to the detriment of that attorney's client.

In the spirit of seeking justice in all cases, the prosecutor should cooperate with defense counsel in providing information and other assistance as volunteered by the prosecutor or reasonably requested by defense counsel. In the event defense counsel makes demands that are abusive, frivolous or made solely for the purpose of delay, the prosecutor need not cooperate with such demands and may seek court guidance on what must be provided. The prosecutor must be mindful that at all times, even when defense counsel is not acting in a professional manner, there are discovery obligations dictated by law and ethical codes that must be fulfilled.

If at any time during his or her association with defense counsel a prosecutor suspects the attorney of involvement in criminal activity, the prosecutor has the responsibility to investigate and take whatever additional action is dictated by the result of the investigation.

The standard requires that an assistant or deputy prosecutor who has knowledge of ethical misconduct by defense counsel which raises substantial question as to the attorney's fitness to practice law report such conduct to his or her supervisor. The assistant or deputy prosecutor needs to be aware that in some jurisdictions, such action may not be sufficient to comply with the ethical rules, and failure to report the defense attorney's misconduct, if the chief prosecutor does not, may, in itself, be misconduct by the assistant prosecutor. The timing of such report should be coordinated so as not to prejudice the defendant.

One continuing myth that pervades the judicial process is the misconception that the defense attorney should be allowed greater leeway in the presentation of his case than the prosecutor. This leeway is often sought to be justified on the grounds that it is necessary to counter-balance the more prolific resources of the state brought to bear upon a single individual. Such reasoning is fallacious, however, when viewed in relation to the purpose of the adversary proceeding and the safeguards already provided therein. The courtroom

is not a stage but a forum, and uniformity of trial decorum by defense and prosecuting attorneys should be maintained by the court to prevent undue influence on judge and jury that might result from theatrical behavior. The prosecutor should be able to bring to the court's attention the failure to maintain such uniformity and should maintain the high standards of conduct befitting a professional advocate in public service.

9. Relations with Victims

2-9.1 Information Conveyed to Victims

Victims of violent crimes, serious felonies, or any actions where it is likely the victim may be the object of physical or other forms of retaliation should be informed of all important stages of the criminal justice proceedings to the extent feasible, upon request or if required by law, including, but not limited to, the following:

a. Acceptance or rejection of a case by the prosecutor's office, the return of an indictment, or the filing of criminal charges;
b. A determination of pre-trial release of the defendant;
c. Any pre-trial disposition;
d. The date and results of trial;
e. The date and results of sentencing;
f. Any proceeding within the knowledge of the prosecutor which does or may result in the defendant no longer being incarcerated, including appellate reversal, parole, release, and escape, unless a legal obligation to inform the victim of such proceeding is imposed by law on another governmental entity; and
g. Any other event within the knowledge of the prosecutor that may put the victim at risk of harm or harassment.

2-9.2 Victim Orientation

To the extent feasible and when it is deemed appropriate by the chief prosecutor, the prosecutor's office should provide an orientation to the criminal justice process for victims of crime and should explain prosecutorial decisions, including the rationale used to reach such decisions. Special orientation should be given to child and spousal abuse victims and their families, whenever practicable.

2-9.3 Victim Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing services to victims of crimes, including, but not limited to the following:

a. Assistance in obtaining the return of property held in evidence;
b. Assistance in applying for witness fees and compensation if provided for by law or local rule;
c. Assistance in obtaining restitution orders at the sentencing;
d. Assistance in appropriate employer intervention concerning required court appearance;
e. Assistance with necessary transportation and lodging arrangements;

f. Assistance in reducing the time the victim has to wait for any court appearance to a minimum; and
g. Assistance in reducing overall inconvenience whenever possible and appropriate.

The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction.

2-9.4 Cooperative Assistance
The prosecutor should work with other law enforcement agencies to:

a. Cooperate with victim advocates for the benefit of providing direct and referral services to victims of crime; and
b. Assist in the protection of a victim's right to privacy regarding a victim's Social Security number, birth date, address, telephone number, place of employment, name (when the victim is a minor or a victim of sexual assault,) or any other personal information unless either a court finds it necessary to that proceeding or disclosure is required by law.

2-9.5. Facilities
Whenever possible, the chief prosecutor should take steps to ensure that victims have a secure and comfortable waiting area that avoids the possibility of making contact with the defendants or friends and families of the defendants.

2-9.6 Victim Compensation Program
The prosecutor should be knowledgeable of the criteria for victim compensation under state law, and should inform victims with potential compensable claims of the existence and requirements of victim compensation programs within the jurisdiction.

2-9.7 Victim Assistance Program
To the extent feasible, the chief prosecutor should develop and maintain a victim assistance program within the staffing structure of the office to provide services and give assistance to victims of crime.

2-9.8 Victim Protection
The prosecutor should be mindful of the possibility of intimidation and harm arising from a victim's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime, and should make referrals and recommendations for program participation where appropriate.

10. Relations with Witnesses

2-10.1 Information Conveyed to Witnesses
The prosecutor should keep witnesses informed of:

a. All pre-trial hearings which the witnesses may be required to attend; and
b. Trial dates and the scheduling of that witness's appearance.

2-10.2 Contacts by Defense with Witnesses
The prosecutor shall not advise a witness (including victims) to decline to meet with or give information to the defense. The prosecutor may advise a witness that they are not required to provide information to the defense outside of court and the prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense.

2-10.3 Represented Witnesses
When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of- court contacts with the witness regarding the subject of that proceeding through the witness's counsel.

2-10.4 Witness Interviewing and Preparation
The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness's testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

2-10.5 Expert Witnesses
When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case.

2-10.6 Witness Assistance
To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing the services to witnesses of crimes including, but not limited to, the following:

a. Assistance in applying for witness fees, if available, and appropriate compensation if provided for by law or local rule;
b. Assistance in appropriate employer intervention concerning required court appearance(s);
c. Assistance in necessary transportation and lodging arrangements, if appropriate;
d. Assistance in minimizing the time the witness has to wait for any court appearance; and
e. Assistance in reducing overall inconvenience whenever possible and appropriate.

2-10.7 Witness Protection
The prosecutor should be mindful of the possibility of intimidation and harm arising from a witness's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime and should make referrals and recommendations for program participation where appropriate.

2-10.8 Facilities
Whenever possible, the chief prosecutor should take steps to ensure that witnesses have a secure and comfortable waiting area that avoids the possibility of the witnesses making contact with defendants or the families and friends of defendants.

2-10.9 Enforcement of Crimes Against Witnesses
The prosecutor, working with other law enforcement agencies, should assign a high priority to the investigation and prosecution of any type of witness intimidation, harassment, coercion, or retaliation, including any such conduct or threatened conduct against family members or friends.

2-10.10 Witness Assistance Program
To the extent feasible, the chief prosecutor should develop and maintain a witness assistance program within the staffing structure of the office to provide services and give assistance to witnesses.

Commentary

Effective prosecution includes a sound understanding of the value of victims and witnesses within the criminal justice system. The necessity of individuals reporting crimes and following through with identifications, statements, and testimony is self-evident. The standard, however, identifies obligations of the prosecutor and others to facilitate the relationship with victims and witnesses.

Both victims and witnesses need notice of developments in criminal cases. Witnesses need to make arrangements in order to be available to testify, while victims may be more concerned with release decisions in apprehension of their personal safety and the safety of their families.

Prosecution should not assume that victims or witnesses are familiar with the terminology, procedures, or even location of the courts. At a minimum, prosecutors should be sensitive to this. Ideally, there should be a formal orientation program available to all victims and witnesses.

Such an orientation program should be part of a number of services provided. Prosecutors should have a leading role in the development and maintenance of victim/witness assistance programs. The standard suggests the type of assistance that should be available, such as employer intervention and reduction in inconvenience.

In addition to a program of assistance, the standard calls for appropriate facilities for victims and witnesses. They should avoid the possibility of contact with the defendant or his friends and family.

As central a figure as the prosecutor is to relations with victims and witnesses, he is certainly not the sole source to accommodate the needs of victims and witnesses. These

needs should be a cooperative effort. For example, one of the greatest needs of victims and witnesses is the assurance of their safety. They are most vulnerable to threats, harassment, and intimidation. Their protection is primarily a law enforcement function. While prosecution should work with the police to minimize this, it is essentially a cooperative effort.

11. Community-Based Programs

2-11.1 Knowledge of Programs
Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

2-11.2 Need for Programs
In jurisdictions where community agencies providing services such as employment, education, family counseling, and substance abuse counseling are needed but not provided by community agencies, the chief prosecutor should encourage the agencies to provide such services. The prosecutor's office should be available as a source of public information for such community-based agencies.

2-11.3. Notice
The prosecutor's office should take steps to ensure that the prosecutor's office and appropriate law enforcement agencies are notified of individuals participating in work-release programs in their jurisdiction.

12. Prisons

2-12.1 Knowledge of Facilities
Prosecutors should be cognizant of, and familiar with, all penal facilities located within the jurisdiction to which offenders prosecuted in the jurisdiction may be sentenced. Where practicable, the chief prosecutor should attempt to ensure that new prosecutors hired by his or her office have an opportunity, as part of their initial training, to tour the penal institutions in their jurisdictions to which defendants may be sentenced.

2-12.2 Improvement of Institutions
The chief prosecutor should work with prison officials and the legislature to upgrade correctional institutions within the state, including the avoidance of prison over-crowding. Additional facilities, new construction or renovation of existing facilities, improved training of staff, and the expansion of existing programs and educational/behavioral services for inmates should be the primary goals of such upgrading.

2-12.3 Prosecutor as Resource
The prosecutor's office should be available as a source of information for prisons and jails and their intake divisions.

2-12.4 Career Offender Identification
The prosecutor's office should assist in the identification of multiple and career offenders.

2-12.5 Appropriate Sentencing
The prosecutor's office should cooperate with the prison system to assure that realistic sentences are carried out.

2-12.6 Innovative Improvements
The chief prosecutor should support innovative programs which would improve the penal system, provided that such programs do not adversely impact justice and appropriate offender accountability.

2-12.7 Notice
The chief prosecutor should take steps to ensure that any institution holding an offender should notify both the prosecutor and law enforcement agencies at the time of an escape, prior to any temporary or final release, and prior to parole consideration.

2-12.8 Corrections Advisory Committee
To the extent practicable, the chief prosecutor should encourage the establishment of and participate in a statewide correctional advisory committee involving representatives from all components of the criminal justice system and responsible members of the public.

13. Parole and Early Release

2-13.1 Prosecution as Resource
To the extent permitted by law, the prosecutor's office should be available as a source of information for the parole board, the department of corrections, or other supervisory agency considering or monitoring an offender's release from custody.

2-13.2 Information System
When the chief prosecutor deems it appropriate, he or she should assist in the development and maintenance of an information system to keep the prosecutor's office informed of parole decisions concerning individuals from, or planning to reside in, the jurisdiction.

2-13.3 Parole Board and Release Discretion
The chief prosecutor should be cognizant of the discretion vested in parole boards and in other entities or agencies authorized by law to make release from custody decisions, and he or she should address abuses of this discretion that come to his or her attention.

2-13.4 Right to Appear
The chief prosecutor should advocate that prosecutors and victims have the opportunity to receive sufficient advance notice of and appear at hearings for parole, pardon, commutation, and grant of executive clemency, or be permitted to otherwise provide information at such hearings. Upon receipt of such notice, the prosecutor should

endeavor, to the extent possible, to notify the victims of such crimes residing within the prosecutor's jurisdiction and local law enforcement agencies of this information.

2-13.5 Early Release
The chief prosecutor should oppose the early release of offenders where the release decision is made by correctional authorities solely or primarily on the basis of overcrowding of the correctional facility, unless such release is mandated by court order.

2-13.6 Notice of Release
The prosecutor should seek to have the prosecutor's office, law enforcement agencies, and victims notified of all releases from confinement or commitment of individuals from facilities within the jurisdiction, or releases from confinement or commitment of individuals outside the jurisdiction who plan to reside in the jurisdiction. For purposes of this standard, "release from confinement or commitment" includes changes in a convicted person's custody status due to parole, pardon, commutation, grant of executive clemency, service of sentence, or release from court-ordered commitment to a mental health facility.

2-13.7 Sexually Dangerous Persons
Where the prosecutor is entitled to petition the court for civil commitment or continued detention of a prisoner after the term of the prisoner's sentence has expired based on a finding of sexually dangerous person status, the prosecutor should take steps to ensure that the board of prisons and parole notify the prosecutor's office of the prisoner's upcoming release date sufficiently in advance of that date to enable the prosecutor to file such a petition in a timely manner.

Commentary

It is recognized that community-based programs represent viable alternatives to traditional institutions for less-serious offenders. In addition, the concept of supplementing incarceration with community-based services has been advanced in recent years. The responsibilities placed upon community-based agencies mandates an increasing need for coordination and communication with the prosecutor. The degree of the prosecutor's input into such agencies may have as wide a spectrum, as those programs do themselves. At the most basic level, the prosecutor must be cognizant of all community services which offenders in the jurisdiction may be sentenced to, referred to as a condition of probation, or referred to as part of a diversionary program. In addition, it is important for the prosecutor to be available as a resource to these services. Prosecution should be in a position to supply these agencies with information concerning clients whom the prosecutor has had contact with.

Some prosecutors have chosen to play an active role in community-based operations. Developing and implementing programs under the auspices of the office has been initiated on a wide scale in recent years. Diversionary and citizen volunteer programs are examples of the input the prosecutor's office may have. In addition, prosecutors are active in local, regional, and statewide planning boards with an emphasis on developing such programs. Where basic community services such as employment, adult education,

family counseling, and substance abuse counseling are not provided or are inadequate, the prosecutor should consider having input in their development or upgrading. The prosecutor's involvement in such planning and advisory boards is important because of his or her position as the chief local law enforcement official.

It must be recognized that there is a need for the prosecutor's involvement in the prisons and their programs. At the most basic level, the prosecutor must be cognizant of detention facilities and the services they offer to which offenders in the jurisdiction may be sentenced. Also, just as for probation and community agencies, the prosecutor's insight into the background and behavior of individuals should be viewed as a resource by officials in this area. Correctional systems may employ an elaborate intake formula without utilizing all previously developed background information concerning offenders. In this situation, prosecution must make itself available as a resource both to offer initial information and to verify facts derived from other sources.

There are other areas where prosecutors could profitably have input into the prison system, if not because of their positions as prosecutors, then because of their positions as concerned leaders in the criminal justice system. In general, correctional institutions in America need upgrading. The prosecutor should strive for better facilities and services within the prison setting, as well as better trained staff. Since prison overcrowding is a problem that affects the entire criminal justice system, it is natural to expect that the prosecutor will be involved in legislative efforts to build new facilities and enlarge existing ones. The ability of the prosecutor to have valid input on upgrading facilities, as well as pre-sentence information, is dependent on his knowledge of the prison facilities within his state. The prosecutor, therefore, must be knowledgeable about the conditions of such facilities.

At a basic level, the prosecutor can also assist in the identification of multiple offenders. The prosecutor should also cooperate with prison systems to assure that realistic prison sentences are carried out. The prosecutor should encourage and support experimental efforts in regard to sentencing practices. Concepts such as mandatory prison sentences for multiple offenders of certain crimes should be closely examined.

As with all the other components discussed here, the prosecutor must urge cooperation. The prosecutor must be considered as a resource to both parole boards and supervisory personnel. In addition, the prosecutor should receive information concerning individuals who have been approved for release from institutions and who are planning to reside in the jurisdiction. And fundamental to the protective function of the prosecutor, he must have an opportunity to oppose parole release decisions that are not in the best interest of the community.

A phenomenon that has arisen in times of budgetary constraints is that of early release programs that have as their primary motivation the alleviation of overcrowding in detention facilities. Often such programs are a reaction to jail litigation attacking conditions of confinement. Such litigation has greatly proliferated in the 1980s and 1990s. Conditions of incarceration, however, are an improper basis for release of

offenders and the standard takes an unequivocal position against it. The solution for prison overcrowding and related problems lies with the appropriate legislative bodies but is not to be found in simply releasing offenders. The prosecutor should support legislative proposals that solve this problem in the appropriate manner by allocating additional public funds for the construction and maintenance of needed facilities. Likewise, the prosecutor should oppose every program of early release based primarily on the problems facing our correctional system. Inappropriate release of offenders undermines every advance achieved in improving the criminal justice system.

Those prosecutors charged with the commitment of sexually dangerous persons should develop procedures with the prisons from which release of such persons will occur to ensure that the prosecutor has sufficient time to prepare the petition for commitment prior to release.

14. Prosecutors and the Media

2-14.1 Media Relations
The prosecutor should seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government.

2-14.2 Balancing Interests
The prosecutor should strive to protect both the rights of the individual accused of a crime and the needs of citizens to be informed about public dangers and the conduct of their government. The prosecutor may provide sufficient information to the public so that citizens may be aware that the alleged perpetrator of a crime has been arrested and that there exists sufficient competent evidence with which to proceed with prosecution. Subject to Standard 2-14.4 and applicable rules of ethical conduct, information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.

2-14.3 Information Appropriate for Media Dissemination by Prosecutors
Prior to and during a criminal trial the prosecutor may comment on the following matters:

a. The accused's name, age, residence, occupation, family status, and citizenship;
b. The substance or text of the charge such as the complaint, indictment, information, and, where appropriate, the identity of the complainant;
c. The existence of probable cause to believe that the accused committed the offense charged;
d. The identity of the investigating and arresting agency, the length and scope of the investigation, the thoroughness of the investigative procedures, and the diligence and professionalism of the law enforcement personnel in identifying and apprehending the accused;

e. The circumstances immediately surrounding the arrest, including the time and place of arrest, the identity of the arresting officer or agency, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest or pursuant to a search warrant; and
f. Information contained in a public record, the disclosure of which would serve the public interest.

2-14.4 Restraints on Information
Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding. In particular, from the commencement of a criminal investigation until the conclusion of trial, the prosecutor should not make any public, extrajudicial statements about the following matters, unless the information is part of the public record of the criminal proceeding:

a. The character, reputation, or prior criminal conduct of a suspect, accused person or prospective witness;
b. Admissions, confessions, or the contents of a statement or alibi attributable to a suspect or accused person;
c. The performance or results of any scientific tests or the refusal of the suspect or accused to take a test;
d. Statements concerning the credibility or anticipated testimony of prospective witnesses;
e. The possibility of a plea of guilty to the offense charged or to a lesser offense, or the contents of any plea agreement.

2-14.5 Public Responses
The prosecutor may make a reasonable and fair reply to comments of defense counsel or others. A public comment made by a prosecutor pursuant to this paragraph shall be limited to statements reasonably necessary to mitigate the effect of undue prejudice created by the public statement of another. In no event should a prosecutor make statements prohibited by Standard 2-14.4 or applicable rules of ethical conduct.

2-14.6 Law Enforcement Policy on Information
The prosecutor should assist law enforcement and other investigative agencies in understanding their statutory responsibilities with respect to the release of criminal justice information. The prosecutor should also assist in the training of law enforcement agencies within his or her jurisdiction on subject matters to avoid when discussing pending criminal investigations or prosecutions with the media.

2-14.7 Judicial Decisions
The prosecutor may inform the public of judicial decisions that are contrary to law, fact, or public interest, but a prosecutor should not make any public statement that he or she knows to be false, or with reckless disregard for its truth or falsity, as to the integrity or qualifications of a judge.

2-14.8 Verdicts
A prosecutor should not make any public statement after trial that is critical of jurors, but may express disagreement with or disappointment in the jury verdict.

Commentary

A primary requirement for the proper functioning of the prosecutor's office is the establishment of public trust in the ability of the prosecutor to effectively represent the public in seeking to attain justice. In order to maintain that public trust, the prosecutor must be accountable for his or her actions. The media is a primary player in testing that accountability. The media reports information regarding: events leading up to criminal investigations and charges; the progress of the case thorough the court system; the performance of the law enforcement officers and prosecutors in the conduct of the investigation and the court proceedings; and, the results of court proceedings.

Because of the prosecutor's unique role as a representative of all of the people in the quest for justice, it would be unfair for him or her to diminish the rights of a defendant to a trial by an unprejudiced jury of his or her peers by broadcasting information through the media where it would go untested by the time-tested procedures incorporated into our criminal justice system.

At the same time, as a representative of the people with the duty to assure that justice is achieved, the prosecutor must be allowed to provide sufficient information to assure the public that community safety is being maintained and that the criminal justice system is operating properly. Maintaining such a balance is the purpose behind these standards.

The prosecutor should take an active role in training law enforcement agencies in his or her jurisdiction on the limitations on public statements. By conducting such advance training, the prosecutor proactively reduces the possibility of comments by law enforcement personnel that are in conflict with the law and legal rules. By that means, the prosecutor also reduces the incidents of challenges to venue and other matters relating to the ability of a defendant to receive a fair trial. The content and extent of a prosecutor's comments regarding judicial decisions are some of the most litigated ethical provisions. At a minimum, a prosecutor cannot knowingly make false or reckless statements about the integrity or qualifications of a judge and jury verdicts. Further, a prosecutor may not engage in conduct with a juror designed to alter that jurors conduct in future jury service.

15. Relations with Funding Entity

2-15.1 Assessment of Need
The chief prosecutor should cooperate with his or her funding entity by providing an assessment of resources needed to effectively administer the duties of the office.

2-15.2 Independent Revenue
The budget for prosecution should be independent of and unrelated to revenues resulting from law enforcement and criminal justice activities, such as fines, forfeitures and

program fees. The prosecutor may expend revenues from forfeited assets only in accordance with statute or court order.

Commentary

The basic premise of this standard is adequate funding. Little can happen in the way of system improvements in general, and the prosecutor's office in particular, without adequate funding.

An expectation persists among funding bodies that funds for law enforcement can be generated from fines and forfeitures. The latter aspect, in particular, is the result of misconceptions concerning the potential for revenue generation that have grown up along with the relatively recent state and federal forfeiture statutes. Such remedies were never intended to be primary sources of revenue, and the notion that they can be "budgeted" into criminal justice agencies is totally misguided. To the extent that such remedies provide some funds for law enforcement agencies, this benefit is at best collateral to their primary purpose. Such revenues are not predictable and, therefore, it is doubly wrong for funding sources to rely upon them when considering budget requests from prosecutors.

16. Relations with the Public

2-16.1 Community Organizations
The prosecutor should encourage the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

2-16.2 Staff Liaison
With respect to such organizations and to the extent that the prosecutor has the resources to do so, the chief prosecutor should assign an appropriate staff member(s) to act as liaison to such organizations and provide qualified speakers from the prosecutor's office to address and appear before such groups on matters of common interest.

2-16.3 Public Education
The chief prosecutor should use all available resources to encourage citizen involvement in the support of law enforcement and prosecution programs and issues. The chief prosecutor should educate the public about the programs, policies, and goals of his or her office and alert the public to the ways in which the public may be involved and benefit from those programs, policies, and goals.

2-16.4 Advisory Role
Because the prosecutor has the responsibility of exercising discretion and making ultimate decisions, the role of public interest and citizen groups must be understood to be advisory only.

Commentary

Since the prosecutor's work is intimately involved with crime in the community, the prosecutor can contribute significantly to crime prevention by lending personal support and the support of the prosecutor's office to existing community crime prevention programs. Further, the prosecutor can lend expertise to criminologists, city planners, and others as they make plans for the growth and development of the community in a way best suited to deter criminal activity. The standard has been developed to serve as a guide to prosecutors in implementing their role in community crime prevention. It recognizes the need for the prosecutor to not only interact with community crime prevention and social service organizations that are community-based, but also to take a hand in the formation of such citizen groups where they presently do not exist.

17. Relations with Non-Governmental Entities

2-17.1 Generally

In all dealings with a non-governmental entity, the chief prosecutor should place the public interest above all other considerations.

2-17.2 Financial and Resource Assistance

a. Where permitted by law, a prosecutor's office may accept financial or resource assistance from a non-governmental source when such assistance is specifically approved by the chief prosecutor;

b. When determining whether to accept assistance from a non-governmental source, the chief prosecutor should give priority consideration to the public interest over the private interests of a non-governmental source, especially when the assistance relates to a specific case or cases rather than office-wide assistance;

c. The chief prosecutor should consider whether accepting assistance from a non-governmental source will create the appearance of undue influence;

d. The chief prosecutor should have office procedures in place that protect the independent exercise of discretion of the office from the undue influence of a non-governmental resource that has provided assistance to the office during the investigation and prosecution of specific cases or types of cases. These procedures should include requirements for strict bookkeeping and accounting of any assistance received, whether financial or resource assistance, and if required by law, disclosure procedures.

Commentary

In times of strained budgets and inadequate resources, an offer of assistance from a non-government funding source is a temptation. Such arrangements need to be carefully examined to make certain that no illegal or unethical strings are attached. If the prosecutor should decide to accept the assistance, he or she must be diligent in keeping track of the funds or equipment provided. In addition, the prosecutor must be vigilant to not allow the assistance to interfere with his or her independent exercise of prosecutorial discretion.

Part III. Investigations

1. Investigations Generally

3-1.1 Authority to Investigate
A prosecutor should have the discretionary authority to initiate investigations of criminal activity in his or her jurisdiction. The exercise of this authority will depend upon many factors, including, but not limited to, available resources, adequacy of law enforcement agencies' investigation in a matter, office priorities, and potential civil liability.

3-1.2 Fairness in Investigations
A criminal investigation should not begin or be continued if it is motivated in whole or part by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive. Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations.

3-1.3 Prosecutor's Responsibility for Evidence
A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

3-1.4 Illegally Obtained Evidence
A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct or encourage others to obtain evidence through illegal means.

3-1.5 Undercover Investigations
Although prosecutors may not normally make false statements or engage in conduct involving deception, a prosecutor may, to the extent permitted by law, engage in or direct law enforcement investigations that involve such conduct. A prosecutor should take all reasonable steps to ensure that any such investigations do not create an unnecessary risk of harm to innocent parties, perpetuate a fraud on the court, or interfere with a defendant's constitutionally protected right to counsel or right to a fair trial. Nothing in this standard precludes a prosecutor from engaging in a duly authorized investigation of judicial or court officers, or members of the bar.

3-1.6 Prosecutorial Investigators
Chief prosecutors should employ properly trained investigators to assist with case preparation, supplement law enforcement investigations, conduct original investigations,

and carry out other duties as assigned by the prosecutor. The chief prosecutor should seek investigative resources from appropriate funding authorities.

Commentary

While the vast majority of criminal investigations are undertaken by law enforcement agencies, there are times when the prosecutor must use his or her authority to initiate or continue an investigation. Some instances where such action by the prosecutor would be appropriate are: where the law enforcement agency that would normally conduct the investigation has a conflict of interest; where the investigation has been handled improperly and is in need of re-investigation; where the investigation calls for expertise that is available in the prosecutor's office; and, where the law enforcement agencies do not have sufficient resources to conduct the investigation.

Given the prosecutor's responsibility to seek justice for all the people, there are axioms regarding investigations that follow. A prosecutor should not conduct an investigation motivated by any characteristics of the victim or perpetrator that are categories irrelevant to the elements of the crime or the motive therefore. The prosecutor should not conduct an investigation in an illegal or improper manner, nor should he or she allow his or her agents to do so.

Undercover investigations are at times the only effective way of obtaining evidence by which to prosecute criminal conduct. Because of the importance of these investigations, prosecutors should make reasonable efforts to see that prosecutors are not precluded from conducting such investigations. Those efforts might include seeking a clarification or modification of rules of ethical conduct.

To avoid duplicative investigations, it is important that each governmental entity with investigative responsibilities, be they local law enforcement or others, advise the prosecutor of investigations in the jurisdiction.

2. Warrant Review

3-2.1 Search and Arrest Warrant Review
The prosecutor's office should develop and maintain a system for providing law enforcement with the opportunity for a prompt legal review of search and arrest warrant applications before the applications are submitted to a judicial officer.

3-2.2 Electronic Surveillance Review
The prosecutor's office should review and approve the use of all electronic surveillance by law enforcement entities that are within the prosecutor's jurisdiction.

3-2.3 Law Enforcement Training
The prosecutor's office should assist in training law enforcement personnel within the prosecutor's jurisdiction on the law applicable to the issuance and execution of search and arrest warrants.

Commentary

Given the number and nature of requirements for the issuance of arrest, search and surveillance warrants that will withstand motions to suppress and other legal attacks, the role of the prosecutor in providing legal assistance to law enforcement agencies is essential. The standard suggests the prosecutor's review of warrants and applications for the same, whenever practical. This review would assure propriety that will enhance the probability of the conviction of the guilty.

In addition to the review, the prosecutor's involvement in police training on the technical requirements and the design of uniform forms would also increase the probability that the resulting warrants would withstand defense challenges.

3. Grand Jury Investigations

3-3.1 Scope of Grand Jury Investigations

Unless the law of the jurisdiction specifically permits otherwise, a prosecutor should not use a grand jury investigation to:

a. Assist solely in a non-criminal matter; or

b. Gather evidence solely for the use at trial against a defendant who already has been charged by indictment or information.

3-3.2 Counsel for Witnesses

In jurisdictions where counsel for a witness is not permitted in the grand jury room but is permitted to consult with the witness outside the room, the prosecutor should grant a witness's reasonable requests to consult with counsel during questioning. If the decision whether to allow such consultation rests with the grand jury, the prosecutor should recommend to the grand jury that the witness be given reasonable opportunities to consult with counsel.

3-3.3 Subpoenaing the Target of an Investigation

In jurisdictions where it is permissible to call a person to testify before the grand jury even though the person is the target of the investigation, the following procedures should apply:

a. The chief prosecutor or his or her designee should approve all efforts to have a target of the investigation testify before a grand jury;

b. The target should be informed in writing of his or her status before any grand jury appearance and advised in writing to obtain legal advice as to his or her rights;

c. To avoid the appearance of unfairness, the prosecutor should make reasonable efforts to secure the target's grand jury appearance voluntarily rather than through a subpoena; and

d. At the outset of his or her appearance before the grand jury, the target should be informed of his or her rights as provided in Standard 3- 3.4.

3-3.4 Grand Jury Warnings

Before questioning a grand jury witness who is the target or subject of the investigation, a prosecutor should warn the witness as follows:

a. If the truthful answer to a question would tend to incriminate you in criminal activity, you may refuse to answer the question;

b. Anything you say may be used against you by the grand jury or in a later legal proceeding;

c. If you have retained counsel with you, the grand jury will grant your reasonable requests to consult with your counsel before answering a question.

These warnings should be given on the record, and the prosecutor should obtain from the witness an affirmation that he or she understands the warnings given.

3-3.5 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. A prosecutor should disclose any credible evidence of actual innocence known to the prosecutor or other credible evidence that tends to negate guilt, as required by law or applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false;

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

3-3.6 Request by a Target to Testify

Except as otherwise governed by the law of the jurisdiction, the prosecutor should grant requests by the target of an investigation to testify before the grand jury unless such a request:

a. Would unduly burden or delay the grand jury proceedings;

b. Would clearly provide information that is irrelevant to the investigation;

c. Would be inconsistent with the need to preserve the secrecy of the investigation;
d. Is made for an improper purpose.

Before a request to testify is granted, the target should be required to waive on the record his or her Fifth Amendment privilege against self incrimination.

3-3.7 Grand Jury Subpoenas
While a prosecutor should zealously pursue all relevant information that is within the scope of a criminal investigation, reasonable efforts should be made to minimize the burden of investigation on third party witnesses. A prosecutor should consider in good faith requests to limit or otherwise modify the scope of subpoenas that are claimed to impose an undue burden on the recipients.

3-3.8 Termination of Target Status
If a person has previously been notified or made aware that he or she was the target of a grand jury investigation and the prosecutor elects not to seek an indictment or the grand jury fails to return a true bill and no further investigation against the target is contemplated, the prosecutor should notify the person he or she is no longer a target, unless doing so is inconsistent with the effective enforcement of the criminal law.

Commentary

In those jurisdictions that may use grand juries to investigate criminal activity and initiate charges, the procedures for the activities of the jurors, prosecutors, law enforcement officers, and witnesses are generally set forth in considerable detail in the statutes and case law of the jurisdiction.

As a result, the standards addressing the grand jury investigation are intended to encourage prosecutors to conduct the grand jury investigations with a sense of fairness. In order for the criminal justice system to remain viable, a large majority of the people must believe in its fairness and effectiveness. Provisions such as allowing a witness to consult with counsel, notification of target status, warning regarding the use of testimony, and allowing a target to testify allow the prosecutor to describe and defend the system by arguing that those provisions show it to be an effective tool in the pursuit of justice.

4. Grants of Immunity

3-4.1 Immunity Generally
A prosecutor should not grant or request immunity for a witness without the prior approval by the chief prosecutor or his or her designee. Approval should be granted only after careful consideration of the public interest. A grant of immunity should be in writing and should describe the scope and character of the immunity granted.

3-4.2 Granting or Requesting Immunity—The Public Interest
Factors that should be considered before deciding whether to grant or request immunity from prosecution for a witness include, but are not limited to:

a. The likelihood that a grant of immunity will produce truthful information from the witness;
b. The value of the witness's testimony or information to the investigation or prosecution;
c. The impact on the witness's perceived credibility if he or she testifies before a grand jury or trial jury pursuant to a grant of immunity;
d. The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;
e. The witness's relative culpability in connection with the offenses being investigated or prosecuted, and his or her criminal history;
f. The possibility of successfully prosecuting the witness prior to compelling his or her testimony; and
g. The likelihood of future physical harm to the witness if he or she testifies under a compulsion order.

3-4.3 Prosecution After Grants of Immunity
Any prosecution of a witness who has previously been immunized should be approved by the chief prosecutor or his or her designee. The prosecutor's office should take reasonable steps to ensure that any decision to pursue a subsequent prosecution of an immunized witness is not perceived as a breach of a prosecutorial commitment.

3-4.4 Grants of Immunity to Compel Testimony on Behalf of a Defendant
Except as otherwise required by law, a prosecutor is not obligated to grant or seek immunity to compel information on behalf of a defendant. A prosecutor may immunize or seek to immunize a defense witness if the prosecutor believes that it is necessary for a just prosecution.

Commentary

There are some prosecutions, usually those in which more than one person carried out the criminal act or acts, where the cooperation and testimony of one or more of the wrong doers is required for the successful prosecution of the most culpable. In those situations in which the person whose testimony is needed cannot be persuaded to cooperate in any other way, a grant of immunity may be required.

Because the grant of immunity carries with it very serious implications, only the chief prosecutor, the person most directly accountable to the people, should exercise the authority to grant immunity. Again, keeping in mind the need to maintain public trust in the criminal justice system, the chief prosecutor should carefully examine the factors set forth in the standards before exercising his or her discretion.

Part IV. Pre-Trial Considerations

1. Screening
2. Charging
3. Diversion
4. Pretrial Release
5. First Appearance
6. Preliminary Hearing
7. Forfeiture
8. The Grand Jury Charging Function
9. Discovery
10. Case Scheduling and Priority
11. Juvenile Justice

1. Screening

4-1.1 Prosecutorial Responsibility
The decision to initiate a criminal prosecution should be made by the prosecutor's office. Where state law allows criminal charges to be initiated by law enforcement or by other persons or means, prosecutors should, at the earliest practical time, decide whether the charges should be pursued.

4-1.2 Prosecutorial Discretion
The chief prosecutor should recognize and emphasize the importance of the initial charging decision and should provide appropriate training and guidance to prosecutors regarding the exercise of their discretion.

4-1.3 Factors to Consider
Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

a. Doubt about the accused's guilt;
b. Insufficiency of admissible evidence to support a conviction;
c. The negative impact of a prosecution on a victim;
d. The availability of adequate civil remedies;
e. The availability of suitable diversion and rehabilitative programs;
f. Provisions for restitution;
g. Likelihood of prosecution by another criminal justice authority;
h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;
i. The charging decisions made for similarly-situated defendants;
j. The attitude and mental status of the accused;
k. Undue hardship that would be caused to the accused by the prosecution;
l. A history of non-enforcement of the applicable law;
m. Failure of law enforcement to perform necessary duties or investigations;

n. The expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after having the opportunity to obtain advice of counsel and is knowing and voluntary;
o. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;
p. Whether the accused has already suffered substantial loss in connection with the alleged crime;
q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction;

4-1.4 Factors Not to Consider

Factors that should not be considered in the screening decision include the following:

a. The prosecutor's individual or the prosecutor's office rate of conviction;
b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;
c. Political advantages or disadvantages that a prosecution might bring to the prosecutor;
d. Characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;
e. The impact of any potential asset forfeiture to the extent described in Standard 4-7.4.

4-1.5 Information Sharing

The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. The prosecutor's office should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information.

4-1.6 Continuing Duty to Evaluate

In the event that the prosecutor learns of previously unknown information that could affect a screening decision previously made, the prosecutor should reevaluate that earlier decision in light of the new information.

4-1.7. Record of Declinations

Where permitted by law, a prosecutor's office should retain a record of the reasons for declining a prosecution.

4-1.8 Explanation of Declinations

The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges.

Commentary

It could be argued that screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice. The screening decision determines whether or not a matter will be absorbed into the criminal justice system. While the decision may be very easy at times, at others it will require an examination of the prosecutor's beliefs regarding the criminal justice system, the goals of prosecution, and a broad assortment of other factors. These standards set forth some of the considerations that may be relevant to an informed screening decision as well as some that should not be used in making the determination. The prosecutor should take care to recognize any of the listed factors that are not appropriate for use in his or her jurisdiction.

2. Charging

4-2.1 Prosecutorial Responsibility
It is the ultimate responsibility of the prosecutor's office to determine which criminal charges should be prosecuted and against whom.

4-2.2 Propriety of Charges
A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

4-2.3 Improper Leveraging
The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.

4-2.4 Factors to Consider
The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include:

a. The nature of the offense, including whether the crime involves violence or bodily injury;
b. The probability of conviction;
c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;
d. Potential deterrent value of a prosecution to the offender and to society at large;
e. The value to society of incapacitating the accused in the event of a conviction;
f. The willingness of the offender to cooperate with law enforcement;
g. The defendant's relative level of culpability in the criminal activity;
h. The status of the victim, including the victim's age or special vulnerability;
i. Whether the accused held a position of trust at the time of the offense;
j. Excessive costs of prosecution in relation to the seriousness of the offense;
k. Recommendation of the involved law enforcement personnel;
l. The impact of the crime on the community;
m. Any other aggravating or mitigating circumstances.

Commentary

Following an initial screening decision that prosecution should be initiated, the charging decision is the prerogative and responsibility of the prosecutor. The charging decision entails determination of the following issues:

- What possible charges are appropriate to the offense or offenses; and
- What charge or charges would best serve the interests of justice?

In making a charging decision, the prosecutor should keep in mind the power he or she is exercising at that point in time. The prosecutor is making a decision that will have a profound effect on the lives of the person being charged, the person's family, the victim, the victim's family, and the community as a whole. The magnitude of the charging decision does not dictate that it be made timidly, but it does dictate that it should be made wisely with the exercise of sound professional judgment.

There will be times when information not known at the time of charging will influence future actions in a case. While it is advisable to gather all information possible prior to charging, that is simply an unrealistic expectation. The prosecutor must balance the importance of gathering information and the importance of public safety interests when determining when he or she has sufficient information to make a charging decision.

While commencing a prosecution is permitted by most ethical standards upon a determination that probable cause exists to believe that a crime has been committed and that the defendant has committed it, the standard prescribes a higher standard for filing a criminal charge. To suggest that the charging standard should be the prosecutor's reasonable belief that the charges can be substantiated by admissible evidence at trial is recognition of the powerful effects of the initiation of criminal charges. Pursuant to the prosecution's duty to seek justice, the protection of the rights of all (even the prospective defendant) is required.

The means by which a prosecutor elects to implement charging decisions is closely related to the mechanism utilized in reaching screening decisions; indeed, the two functions may be appropriately combined in a single individual or office division.

Diversion participation should only be done at the prosecutor's discretion, and the prosecutor should not yield to external pressures in either selecting a charge or deciding if diversion alternatives are a proper course of action. Diversion may be done at any stage of the proceeding, but with the option of continued prosecution. That does not preclude diversion alternatives after a formal charge. At that stage, the threat of criminal prosecution is even greater to the accused, and thus positive participation in diversion alternatives and favorable results may be more likely.

Initial standards or guidelines for charging will be established by the chief prosecutor only. In the one-person office, the chief prosecutor will also act as the agent for implementing these guidelines. Larger offices may find it convenient, particularly in

respect to minor offenses, to delegate much of the responsibility for charging to selected individuals or to establish a separate office division for intake procedures. The designated individuals or office division should be responsible for reaching initial charging decisions, subject to review and approval by the chief prosecutor.

The chief prosecutor should establish guidelines by which charging decisions may be implemented. For the one-person office this formulation process will provide consistency of operation and an incentive to develop and articulate specific policies. The same holds true for other size offices.

Some prosecution offices employ vertical prosecution with great success, making the use of guidelines important for consistent application.

3. Diversion

4-3.1 Prosecutorial Responsibility
The decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

4-3.2 Diversion Alternatives
A prosecutor should be aware and informed of the scope and availability of all alternative diversion programs. The prosecutor's office should take steps to help ensure that all diversion programs are credible and effective.

4-3.3 Need for Programs
In jurisdictions in which diversion programs are deemed insufficient by the chief prosecutor, the prosecutor's office should urge the establishment, maintenance, and enhancement of such programs as may be necessary.

4-3.4 Information Gathering
The prosecutor should have all relevant investigative information, personal data, case records, and criminal history information necessary to render sound and reasonable decisions on diversion of individuals from the criminal justice system. The chief prosecutor should take steps to ensure the enactment of appropriate legislation and court rules to enable the prosecutor to obtain such information from appropriate agencies.

4-3.5 Factors to Consider
The prosecutor may divert individuals from the criminal justice system when he or she considers it to be in the interest of justice and beneficial both to the community and to the individual. Factors which may be considered in this decision include:

a. The nature, severity, or class of the offense;
b. Any special characteristics or difficulties of the offender;
c. Whether the defendant is a first-time offender;

d. The likelihood that the defendant will cooperate with and benefit from the diversion program;
e. Whether an available program is appropriate to the needs of the offender;
f. The impact of diversion and the crime on the community;
g. Recommendations of the relevant law enforcement agency;
h. The likelihood that the defendant will recidivate;
i. The extent to which diversion will enable the defendant to maintain employment or remain in school;
j. The opinion of the victim;
k. Provisions for restitution;
l. The impact of the crime on the victim; and
m. Diversion decisions with respect to similarly situated defendants.

4-3.6 Diversion Procedures

The process of diverting a defendant should include the following procedures:

a. A signed agreement or court record specifying all requirements for the accused;
b. A signed waiver of speedy trial requirements, where applicable;
c. The right of the prosecutor, for a designated time period, to proceed with the criminal case when, in the prosecutor's judgment, such action would be in the interest of justice;
d. Appropriate mechanisms to safeguard the prosecution of the case, such as admissions of guilt, stipulations of facts, and depositions of witnesses.

4-3.7 Record of Diversion

A record of the defendant's participation in a diversion program, including the reasons for the diversion, should be created for each case and maintained by the prosecutor's office for subsequent use by law enforcement, unless prohibited by law.

4-3.8 Explanation of Diversion Decision

Upon request, the prosecutor should provide adequate explanations of diversion decisions to victims, witnesses, law enforcement officials, the court, and statewide diversionary program(s) and, when deemed appropriate, to other interested parties.

Commentary

An alternative available to prosecutors in the processing of a criminal complaint is that of diversion - the channeling of criminal defendants and even potential defendants, into programs that may not result in a criminal conviction. The purposes of diversion programs include:

- Unburdening court dockets and conserving judicial resources for more serious cases;
- Reducing the incidence of offender recidivism by providing community-based rehabilitation that would be more effective and less costly than the alternatives available in continued criminal prosecution.

Determination of the appropriateness of diversion in a specified case will involve a subjective determination that, after consideration of all circumstances, the offender and the community will both benefit more by diversion than by prosecution.

The chief prosecutor should promulgate guidelines outlining the approach and criteria under which he wishes diversion determinations to be made. These guidelines will aid in providing a policy that is both uniform and in accordance with the intentions of the prosecutor.

Equally important as protecting the rights of the individual is the necessity to protect the interests of society. It must be remembered that the individual involved in the diversion process is accused of having committed a criminal act and is avoiding prosecution only because an alternative procedure is thought to be more appropriate and more beneficial.

4. Pretrial Release

4-4.1 Prosecutorial Responsibility

A prosecutor should request that bail be set at an appropriate amount to ensure that the defendant appears at all required court proceedings, and, where allowed by law, does not pose a danger to others or to the community. Where permitted by law, a prosecutor should request that the defendant be held without bail if the prosecutor reasonably believes the accused:

a. Would present a danger to others or the community if he or she were released prior to trial;

b. Is likely to tamper with evidence, attempt to improperly influence witnesses, or otherwise interfere with the orderly resolution of the criminal case; or

c. Is a substantial flight risk.

4-4.2 Bail Amount Request

A prosecutor should take steps to gather adequate information about the defendant's circumstances and history to request an appropriate bail amount. Among the factors a prosecutor may consider in determining the proper amount to request are:

a. The defendant's employment status and history;

b. The defendant's financial condition, ability to raise funds and source of funds;

c. The defendant's length and character of residence in the community, and the nature and extent of the accused's family ties to the community;

d. The nature and severity of the crime, the strength of the evidence, and the severity of the sentence that could be imposed on conviction, to the extent these factors are relevant to the risk of non-appearance and the commission of other crimes while awaiting trial;

e. The defendant's criminal record, including any record of appearance or non-appearance on other criminal charges;

f. The likelihood of the defendant attempting to intimidate witnesses or victims, or to tamper with the evidence;

g. Identification of responsible members of the community who would vouch for the accused's reliability;
h. Any other factors indicating the defendant's ties to the community.

A prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial.

4-4.3 Continuing Obligation
If, after the initial bail determination is made, the prosecutor learns of new information that makes the original bail decision inappropriate, the prosecutor should take steps to modify the accused's bail status or conditions.

4-4.4 Alternatives to Pretrial Incarceration
Prosecutors should recommend bail decisions that facilitate pretrial release rather than detention to the extent such release is consistent with the prosecutor's responsibilities set forth in Section 4-4.1.

4-4.5 Periodic Reports
A prosecutor should request periodic reports on detained defendants to determine if continued detention under the current conditions is appropriate. The prosecutor's office should be informed of any violations of pretrial release conditions of a defendant released pending trial, and should seek revocation of release status, higher bail and/or appropriate sanctions as deemed necessary, in accordance with applicable law or court rules.

Commentary

The prosecutor's recommendation regarding bail amounts and conditions will be shaped to some extent by the laws and procedures in his or her jurisdiction. The procedures may range from the use of a summons to arrest and a request to hold the defendant without bail under appropriate conditions.

These provisions recognize a respect for the presumption of innocence, and therefore state a clear preference for release of defendants pending trial. However, because a prosecutor must represent the public interest, the standards also recognize that in some circumstances in which the defendant is a significant flight risk, or where there is a threat to harm or intimidate witnesses or victims or to destroy or manipulate evidence, setting no bail or setting bail in an amount where the defendant will not be able to meet the conditions is appropriate.

Once the conditions for pre-trial release have been established, the person or agency responsible for monitoring the defendant's compliance should keep the prosecutor apprised of the defendant's performance. The prosecutor should continue to exercise reasonable discretion in determining whether modification of the conditions, either to lessen the requirements or to seek sanctions or incarceration, should be sought.

5. First Appearance

4-5.1 Prosecutorial Responsibility
The prosecutor should work with law enforcement and the courts to see that the accused is brought before a judicial officer without unnecessary delay.

4-5.2 Prosecutor's Role
A prosecutor need not be present at the first appearance unless required by statute, rule, or court order. When the prosecutor is present at the first appearance, he or she should, to the extent practicable, ensure that:

a. Bond is set commensurate with the offense charged;
b. The charges are correct and appropriate;
c. Any schedule of future proceedings that the court sets avoids unnecessary delay.

If the accused is not represented by counsel at the first appearance, a prosecutor should not seek a waiver from the accused of a preliminary hearing or other pretrial right.

Commentary

Although prosecutors usually do not control when a first appearance occurs, they should work very closely with law enforcement and the courts to establish standard procedures to assure the filing of accurate charges without unnecessary delay, but with sufficient time for prosecutor input.

6. Preliminary Hearing

4-6.1 Prosecutor's Role
The prosecutor should appear at the preliminary hearing and present such reliable information as is required for a judicial officer to make the probable cause determination.

4-6.2 Waiver
Before accepting a waiver by the defendant of a probable cause determination, the prosecutor should be satisfied that the defendant's decision was knowing and voluntary. A defendant's opportunity to consult with counsel prior to the waiver is prima facie evidence of a valid waiver.

Commentary

Requirements for preliminary hearings vary considerably from jurisdiction to jurisdiction. These standards recognize the importance of a preliminary hearing when held and the responsibility of the prosecutor with the court to assure the fairness in the conduct of such a hearing.

7. Forfeiture

4-7.1 Prosecutor's Role
The prosecutor should support the enactment and enforcement of statutes that permit the forfeiture of property used in or obtained as a result of criminal activity.

4-7.2 Impact on Private Counsel
The ability of defendants to secure private legal counsel of their choice should not be a consideration in the prosecutor's enforcement of forfeiture statutes.

4-7.3 Factors in Mitigation
A prosecutor may, in the exercise of his or her sound professional judgment, decide to remit, mitigate, or forgo the forfeiture of property to an owner or interest holder other than the wrongdoer. Factors a prosecutor may consider in making such a decision include whether an owner or interest holder has, to the prosecutor's satisfaction, established that:

a. The interest was acquired and maintained in good faith without knowledge or substantial reason to know of the conduct that gave rise to the forfeiture;
b. That the forfeiture would work a severe hardship on an otherwise innocent owner or interest holder; and
c. That the property will not be used in furtherance of future criminal activity or benefit the one whose conduct subjected the property to forfeiture.

4-7.4 Impermissible Considerations
The fact that forfeited assets might be available to fund law enforcement efforts should not unduly influence the proper exercise of the prosecutor's discretion in the enforcement of forfeiture statutes or the criminal law, nor should forfeiture be improperly used as a substitute for criminal prosecution.

Commentary

The concept that a person should not be allowed to profit from his or her wrongdoing is the underlying principle of forfeiture. In addition to the restitutional aspect, the possibility of deterrence to others is also important.

Frequently, ownership interests in property are mixed and forfeiture would have adverse results for others. The prosecutor, in his discretion, may determine when extenuating circumstances exist such that foregoing, remitting, or mitigating forfeiture is appropriate. These standards provide guidance in exercising that discretion.

The purpose of forfeiture is to deter conduct giving rise to forfeiture and to remove the instrumentalities and proceeds of such conduct.

8. The Grand Jury Charging Function

4-8.1 Prosecutorial Responsibility

To the extent permitted by the jurisdiction's law or rules, a prosecutor appearing before a grand jury:

a. May explain the law and express his or her opinion on the legal significance of the evidence;

b. Should assist the grand jury with procedural and administrative matters appropriate to its work;

c. May recommend that specific charges be returned;

d. Should recommend that a grand jury not indict if the prosecutor believes that the evidence presented does not warrant an indictment under governing law, and he or she should encourage members of the grand jury to consider the fact that sufficient evidence must exist to enable the prosecutor to meet the state's burden of proof at trial;

e. Should take all necessary steps to preserve the secrecy of the grand jury proceedings.

4-8.2 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. A prosecutor should present to the grand jury any credible evidence or information of actual innocence or other credible evidence that a prosecutor reasonably believes tends to negate guilt, as required by law and applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false; and

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

4-8.3 Impermissible Conduct
A prosecutor should take no action and should make no statements that have the potential to improperly undermine the grand jury's independence.

4-8.4 Hearsay Evidence
The prosecutor may present reliable hearsay evidence to a grand jury in accordance with applicable law or court rule. However, when hearsay evidence is presented, the grand jury should be informed that it is hearsay evidence.

4-8.5 Statements of Record
In jurisdictions where grand jury proceedings are recorded, a prosecutor's advice, recommendations, and other communications with the grand jurors should be of record except as otherwise provided by law.

Commentary

The standard outlines what action a prosecutor may be permitted without compromising the independence of the grand jury. Given the need to respect the independence of the grand jury, these standards impose a duty upon the prosecutor to conduct himself or herself with the same candor as is required before a court.

9. Discovery

4-9.1 Prosecutorial Responsibility
A prosecutor should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

4-9.2 Continuing Duty
If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

4-9.3 Access to Evidence Not to Be Impeded
Unless permitted by law or court order, a prosecutor should not impede opposing counsel's investigation or preparation of the case.

4-9.4 Deception as to Identity
Except as permitted by law or court order, a prosecutor should not deceive the defendant or a witness as to his or her identity or affiliation.

4-9.5 Redacting Evidence
When portions of certain materials are discoverable and other portions are not, a prosecutor should make good faith efforts to redact the non-discoverable portions in a way that does not cause confusion or prejudice the accused.

4-9.6 Reciprocal Discovery
A prosecutor should take steps to ensure that the defense complies with any obligation to provide discovery to the prosecution.

Commentary

Rules of Discovery vary significantly from jurisdiction to jurisdiction, including differences in interpretation of the legal requirements by various state and federal prosecutors. Therefore these standards set out to discuss fairness and responsibility without direct reference to specific interpretations of the laws or rules of the various jurisdictions.

While it is well established that any doubt about whether something is subject to disclosure should be resolved in favor of the defendant, and that disclosure of material exculpatory and impeachment evidence is required, further disclosures may be required by statute, case law, and rules of ethical conduct in some jurisdictions.

Consistent with the duty to disclose imposed by the Constitution, other laws, and rules of ethical conduct, if information becomes known to the prosecutor after initial disclosures have been made, that information should be turned over promptly.

Caution in discovery is required in a few areas. First, the prosecutor should educate and inform law enforcement agencies in his or her jurisdiction that the prosecutor, not the law enforcement officer or agency, is the arbiter of what information is disclosed to the defense. The law enforcement community should be encouraged to provide all information in its possession to the prosecutor so that he or she can make a disclosure decision.

Second, the prosecutor's relationship with defense counsel or his or her opinion regarding the defendant is not a factor in the discovery process.

Third, while work product of a prosecutor is typically exempt from disclosure, care must be taken in assigning the "work product" label.

Fourth, when a question regarding the necessity for disclosure is not resolved amicably among the parties, consideration should be given to obtaining guidance from the court.

10. Case Scheduling and Priority

4-10.1 Prosecutorial Responsibility
A prosecutor should not seek or cause delays because of a lack of diligent preparation, nor should the prosecutor seek or cause delays for the purpose of disadvantaging the defendant or his or her counsel.

4-10.2 Factors to Consider in Setting Priorities
In setting case priority, the prosecutor should consider the following factors:

a. Criminal cases should normally be given priority over civil cases;
b. Whether the defendant is in pre-trial custody;
c. Whether the defendant represents a significant threat of violence to others;
d. Whether the victim is a child or family member of the defendant;
e. Whether the defendant is a repeat offender;
f. Whether the defendant is charged with a heinous crime;
g. Whether the defendant is a public official;
h. The age of the case;
i. The availability of witnesses or other evidence;
j. Any significant problems or interests of particular concern to the community;
k. The need for and availability of scientific testing of evidence;
l. The age, health and circumstances of victims and witnesses.

4-10.3 Trial Scheduling
A prosecutor shall exercise due diligence in preparing for trial and not cause or accede to any unreasonable delay. Some factors to be considered in deciding whether or not a delay is reasonable are:

a. Whether the case is criminal or civil;
b. Whether the defendant is in pre-trial custody;
c. Whether the defendant constitutes a significant threat of violence to others;
d. Whether the victim is a child or a family member of the defendant;
e. The need for and availability of scientific testing of evidence;
f. The age, health and circumstances of the victims and witnesses;
g. Whether the defendant is a repeat offender;
h. The seriousness of the crime(s);
i. Whether the defendant is a public official;
j. The age of the case;
k. The availability of witnesses; and
l. The existence of any other significant factor that requires or justifies a delay at the request of either party.

Commentary

In the pursuit of his or her duty to seek justice, the prosecutor needs to be mindful of the expression, “justice delayed is justice denied.” From the view of society, delays in disposition of violation of criminal laws create uncertainty regarding the reliability and efficiency of the criminal justice system. Victims and families of victims are left without

a necessary ingredient for closure. Defendants are kept in a state of limbo about their future. In short, delay does not serve anyone's best interests.

With that being said, the reality is that due to case loads and the necessity for complete investigations by both the prosecution and defense, case disposition often takes longer than those involved would like. These standards set forth guidelines for keeping delay as short as reasonably possible.

11. Juvenile Justice

4-11.1 Prosecutorial Responsibility

A prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if he or she were an adult. The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special interests and needs of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor.

4-11.2 Personnel and Resources

The prosecutor's office should devote specific personnel and resources to fulfill its responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters.

4-11.3 Qualification of Prosecutors in Juvenile Court

Specialized training and experience should be required for prosecutors assigned to juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in children and youth, education, and experience. Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney, and receive special training regarding juvenile matters.

4-11.4 Screening Juvenile Cases

The prosecutor or a designee should review all cases for which some action is required to decide whether a case will be transferred to adult court, filed as a formal petition with the juvenile court, or diverted. If the facts are not legally sufficient to warrant the current action, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

4-11.5 Transfer or Certification to Adult Court

When making a discretionary decision whether to transfer a juvenile to adult court, a prosecutor should consider, among other factors, whether the gravity of the current alleged offense or the record of previous delinquent behavior reasonably indicates that the treatment services and dispositional alternatives available in the juvenile court are:

a. Adequate to protect the safety and welfare of the community; and
b. Adequate for dealing with the juvenile's delinquent behavior.

4-11.6 Criteria for Deciding Formal Adjudication Versus Diversion

The prosecutor or a designee must further review legally sufficient cases not appropriate for transfer to adult court to determine whether they should be filed formally with the juvenile court or diverted for treatment, services, or probation. In determining whether to file formally or, where allowed by law, divert, the prosecutor or designated case reviewer should consider the following factors in deciding what disposition best serves the interests of the community and the juvenile:

a. The seriousness of the alleged offense, including whether the conduct involved violence or bodily injury to others;
b. The role of the juvenile in that offense;
c. The nature and number of previous cases presented by law enforcement or others against the juvenile, and the disposition of those cases;
d. The juvenile's age, maturity, and mental status;
e. The existence of appropriate treatment or services available through the juvenile court or through diversion;
f. Whether the juvenile admits guilt or involvement in the offense charged, and whether he or she accepts responsibility for the conduct;
g. The dangerousness or threat posed by the juvenile to the person or property of others;
h. The decision made with respect to similarly-situated juveniles;
i. The provision of financial restitution to victims; and
j. Recommendations of the referring agency, victim, law enforcement and advocates for the juvenile.

4-11.7 Diversion

The prosecutor should be responsible for recommending which cases should be diverted from formal adjudication. Treatment, restitution, or public service programs developed in his or her office may be utilized, or the case can be referred to existing probation or community service agencies. No case should be diverted unless the prosecutor reasonably believes that he or she could substantiate the criminal or delinquency charge against the juvenile by admissible evidence at a trial.

4-11.8 Disposition Agreements

The decision to enter into a disposition agreement should be governed by both the interests of the state and those of the juvenile, although the primary concern of the prosecutor should be protection of the public interest as determined in the exercise of traditional prosecutorial discretion.

4-11.9 Prosecutor's Role in Adjudication

At the adjudicatory hearing, the prosecutor should assume the traditional adversarial role of a prosecutor.

4-11.10 Dispositions
The prosecutor should take an active role in the dispositional hearing and make a recommendation to the court after reviewing reports prepared by prosecutorial staff, the probation department, and others. In making a recommendation, the prosecutor should consider those dispositions that most closely meet the interests and needs of the juvenile offender, provided that they are consistent with community safety and welfare.

4-11.11 Victim Impact
At the dispositional hearing, the prosecutor should make the court aware of the impact of the juvenile's conduct on the victim and the community.

4-11.12 Evaluation of Programs
The prosecutor should periodically review diversion and dispositional programs, both within and outside the prosecutor's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the juvenile. The prosecutor should maintain a working relationship with all outside agencies providing diversion and dispositional services to ensure that the prosecutor's decisions are consistent and appropriate. If the prosecutor discovers that a juvenile or class of juveniles is not receiving the care and treatment envisioned in disposition or diversion decisions, the prosecutor should inform the court of this fact.

4-11.13 Duty to Report
If the prosecutor becomes aware that the sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that the manner in which the sanctions are being carried out is inappropriate, the prosecutor should take all reasonable steps to ensure agency supervisors are informed and appropriate measures are taken. If the situation is not remedied, it is the duty of the prosecutor to report this concern to the agency and, if necessary, to the dispositional court.

Commentary

The prosecutor is charged to seek justice just as he does in adult prosecutions. The prosecutor in the juvenile system, however, is further charged to give special attention to the interest and needs of the accused juvenile to the extent that it does not conflict with the duty to fully and faithfully represent the interests of the state. This call for special attention reflects the philosophy that the safety and welfare of the community is enhanced when juveniles, through counseling, restitution, or more extensive rehabilitative efforts and sanctions, are dissuaded from further criminal activity.

To efficiently carry out his or her duties, it is desirable that the prosecutor appear at all stages of the proceedings. In so doing, the prosecutor maintains a focus on the safety and well-being of the community at each decision-making level. Further, because the juvenile system is increasingly adversarial, the prosecutor fulfills an important role in addressing the arguments of other juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.

The standards further emphasize professionalism in juvenile court work. It provides that attorneys in juvenile court should be experienced, competent, and interested. Because of the increased adversarial nature of juvenile proceedings, the prosecutor should be responsible for screening to determine whether there is sufficient evidence to believe that a crime was committed and that the juvenile committed it. A case should only be further processed if it is legally sufficient. “Legally sufficient” means a case in which the prosecutor believes that he can reasonably substantiate the charges against the juvenile by admissible evidence at trial. These determinations should be made by the prosecutor.

After a determination of legal sufficiency, the next decision to be made is whether the case should be transferred to the adult court, diverted informally, or referred to the juvenile court. This decision has both legal and social implications. It should be made either by an experienced prosecutor who has an interest in juveniles or by other case screeners under the guidance of a prosecutor. The prosecutor, in exercising this function, should try to accommodate the needs of the juvenile while upholding the safety and welfare of the community. As in situations involving adults, these decisions should be made without unreasonable delay. Prompt determinations generally promote confidence in the system and fairness to the victim, the community, and the juvenile. Further, prompt decisions are more likely to result in rehabilitation of the juvenile by providing more immediate attention.

In many jurisdictions, transfer of juveniles to adult court is controlled by statute or practice. This standard simply provides guidance for prosecutors in using discretion to the extent that they participate in this process.

Diversion of cases in juvenile court from the formal charging, adjudication and disposition procedure has become common in less serious offenses. The impetus for such a procedure is that because most juveniles are in the process of developing their behavior and values, there is a unique opportunity presented at the juvenile court level to dissuade them from criminal activity. The prosecutor should seriously consider involvement in this process. For all the pessimism that abounds in the system, it is nevertheless undoubtedly true that many first-time or minor offenders will never enter the justice system again if their cases are handled properly. Treatment, restitution, or service programs often are viable alternatives to court processing. These standards describe the opportunity for prosecutors to be involved either in diversion programs based in their offices or through referral to existing probation or community service agencies.

These standards reflect the consensus that plea agreements are appropriate in a juvenile court to the extent that they are appropriate in the adult court. The appropriateness and extent to which plea agreements are used are matters of office policy to be determined by the chief prosecutor. The prosecutor should always take steps to ensure that the resulting disposition is in the interest of the public with due regard being given the needs of the juvenile.

A plea agreement should only be entered into when there is sufficient admissible evidence to demonstrate a prima facie case that the juvenile has committed the acts alleged in the petition to which he is pleading guilty.

In those matters that are not diverted or disposed of without trial the prosecutor should assume the traditional prosecution role in the adversarial process with respect to determination of guilt or innocence. This standard, therefore, suggests that the same rules of evidence employed in adult criminal cases in the jurisdiction should be applied to juvenile court cases. Prosecutors should strive in the juvenile court setting to maintain a distinction between a factual determination of innocence or guilt and a determination of disposition. This approach promotes fairness to both the victim and the community and enhances the integrity of juvenile court findings.

Prosecutors should offer dispositional appropriate alternatives to the court. When a juvenile presents a danger to the safety and welfare of the community, the prosecutor should voice this concern. On the other hand, when appropriate, the prosecutor may offer a dispositional recommendation that is less restrictive than what the juvenile court judge may contemplate imposing.

This standard also suggests that the prosecutor should take a leadership role in the community in assuring that a wide range of appropriate dispositional alternatives are available for youth who are adjudicated delinquents. In addition, the prosecutor is encouraged to follow up on cases to ensure that dispositions are upheld, court ordered sanctions are administered, and treatment is provided.

Part V. Propriety of Plea Negotiation and Plea Agreements

1. General
2. Availability for Plea Negotiation
3. Factors for Determining Availability and Acceptance of Guilty Plea
4. Fulfillment of Plea Agreements
5. Record of Plea Agreement

1. General

5-1.1 Propriety
The prosecutor is under no obligation to enter into a plea agreement that has the effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate plea agreement. When agreement is reached, it should be reduced to writing, if practicable.

5-1.2 Types of Plea Negotiations
The prosecution, in reaching a plea agreement, may agree to a disposition of the case that includes, but is not limited to, one or more of the following commitments from the prosecution in exchange for a plea of guilty:

a. To make certain recommendations concerning the sentence which may be imposed by the court if the defendant enters a plea of guilty or *nolo contendere*;
b. To agree not to oppose sentencing requests made by the defense; or
c. To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses charged if the defendant enters a plea of guilty or *nolo contendere* to another offense or other offenses supported by the defendant's conduct;
d. To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or not to file potential charges, if the accused agrees not to pursue potential civil causes of action against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his staff or agents;
e. To agree to forego an ongoing investigation into other criminal activity of the defendant if the defendant enters a plea of guilty or *nolo contendere* to a presently charged offense or offenses; and/or
f. To agree that the defendant and prosecution will jointly recommend a particular sentence to the court and that the prosecution will support the defendant's motion to withdraw his plea of guilty if the court exceeds this agreed upon sentencing recommendation.

5-1.3 Conditional Offer
Prior to reaching a plea agreement and subject to the standards herein and the law of the jurisdiction, the prosecutor may set conditions on a plea agreement offer, such as:

a. The defendant's acceptance of the offer within a specified time period that would obviate the need for extensive trial preparation;
b. The defendant's waiver of certain pre-trial rights, such as the right to discovery;
c. The defendant's waiver of certain pre-trial motions such as a motion to suppress or dismiss; or
d. The defendant's waiver of certain trial or post-trial rights, such as the right to pursue an appeal.

5-1.4 Uniform Plea Opportunities
Similarly situated defendants should be afforded substantially equal plea agreement opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor should not take into account the defendant's race, religion, sex, sexual orientation, national origin, or political association or belief, unless legally relevant to the criminal conduct charged.

2. Availability for Plea Negotiation

5-2.1 Willingness to Negotiate
The prosecutor should make known a policy of willingness to consult with the defense concerning disposition of charges by plea and should set aside times and places for plea negotiations, in addition to pre-trial hearings.

5-2.2 Presence of Defense Counsel
The prosecutor should not negotiate a plea agreement directly with a defendant who is represented by counsel in the matter, unless defense counsel is either present or has given his or her express permission for the prosecutor to negotiate directly with the defendant.

3. Factors for Determining Availability and Acceptance of Guilty Plea

5-3.1 Factors to Consider
Prior to negotiating a plea agreement, the prosecution should consider the following factors:

a. The nature of the offense(s);
b. The degree of the offense(s) charged;
c. Any possible mitigating circumstances;
d. The age, background, and criminal history of the defendant;
e. The expressed remorse or contrition of the defendant, and his or her willingness to accept responsibility for the crime;
f. Sufficiency of admissible evidence to support a verdict;
g. Undue hardship caused to the defendant;
h. Possible deterrent value of trial;
i. Aid to other prosecution goals through non-prosecution;
j. A history of non-enforcement of the statute violated;
k. The potential effect of legal rulings to be made in the case;
l. The probable sentence if the defendant is convicted;
m. Society's interest in having the case tried in a public forum;
n. The defendant's willingness to cooperate in the investigation and prosecution of others;
o. The likelihood of prosecution in another jurisdiction;
p. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;
q. The willingness of the defendant to waive his or her right to appeal;
r. The willingness of the defendant to waive (release) his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;
s. With respect to witnesses, the prosecution should consider the following:
    1. The availability and willingness of witnesses to testify;
    2. Any physical or mental impairment of witnesses;
    3. The certainty of their identification of the defendant;
    4. The credibility of the witness;
    5. The witness's relationship with the defendant;
    6. Any possible improper motive of the witness;
    7. The age of the witness;
    8. Any undue hardship to the witness caused by testifying.
t. With respect to victims, the prosecution should consider those factors identified above and the following:

1. The existence and extent of physical injury and emotional trauma suffered by the victim;
2. Economic loss suffered by the victim;
3. Any undue hardship to the victim caused by testifying.

5-3.2 Innocent Defendants
The prosecutor should always be vigilant for the case where the accused may be innocent of the offense charged. The prosecutor must satisfy himself or herself that there is a sound factual basis for all crimes to which the defendant will plead guilty under any proposed plea agreement.

5-3.3 Candor
The prosecutor should not knowingly make any false or misleading statements of law or fact to the defense during plea negotiations.

4. Fulfillment of Plea Agreements

5-4.1 Limits of Authority
The prosecutor should not make any guarantee concerning the sentence that will be imposed by the court or concerning a suspension of sentence. The prosecutor may advise the defense of the position the prosecutor will take concerning disposition of the case, including a sentence that the prosecutor is prepared to recommend to the court based upon present knowledge of the facts of the case and the offender, including his or her criminal history.

5-4.2 Implication of Authority
The prosecutor should not make any promise or commitment assuring a defendant that the court will impose a specific sentence or disposition in the case. The prosecutor should avoid implying a greater power to influence the disposition of a case than the prosecutor actually possesses.

5-4.3 Inability to Fulfill Agreement
The prosecutor should not fail to comply with a plea agreement that has been accepted and acted upon by the defendant to his or her detriment, unless the defendant fails to comply with any of his or her obligations under the same agreement or unless the prosecutor is authorized to do so by law. If the prosecutor is unable to fulfill an understanding previously agreed upon in plea negotiations, the prosecutor should give prompt notice to the defendant and cooperate in securing leave of court for the defendant to withdraw any plea and take such other steps as would be appropriate to restore the defendant and the prosecution to the position they were in before the understanding was reached or plea made.

5-4.4 Rights of Others to Address the Court
The prosecutor should not commit, as part of any plea agreement, to limit or curtail the legal right of any victim or other person authorized by law to address the court at the time

of plea or sentencing. The prosecutor should honor the legal rights of victims and other persons authorized by law to address the court.

5-4.5 Notification of Media
Prior to the entry of a plea of guilty by the defendant in open court, the prosecutor should not make any extrajudicial comments to the media about either the possibility or existence of a plea agreement with the defendant, or of the nature or contents of any such agreement.

5. Record of Plea Agreement

5-5.1 Record of Agreement
Whenever the disposition of a charged criminal case is the result of a plea agreement, the prosecutor should make the existence and terms of the agreement part of the record. The prosecutor should also maintain the reasons for the disposition in the case file.

5-5.2 Reasons for *Nolle Prosequi*
Whenever felony criminal charges are dismissed by way of a *nolle prosequi* or its equivalent, the prosecutor should make a record of the reasons for his or her action.

Commentary

In the prosecutor's quest for justice, it may become necessary and desirable to dispose of criminal cases without going to trial. There are few prosecutors who have the resources that would be required to try every case. Given that reality, most prosecutors actively engage in negotiations to reach appropriate dispositions in most cases.

Like other agreements between parties, most plea negotiations require some action by both the prosecutor and the defendant. Also, like most other agreements, plea negotiations should be conducted in an honest and forthright manner in which the prosecution is guided by representing the best interest of society while being mindful of duties of candor and to avoid overreaching in dealing with the defendant. The prosecutor should be careful not to agree to an action that he or she cannot perform. Likewise, the defendant should be aware that his or her failure to perform his or her part of the agreement might well result in the prosecutor's withdrawal from the agreement.

In the event that the prosecutor is for some reason unable to fulfill a portion of the agreement, he or she should do everything possible to help restore the defendant and the prosecution to their respective positions prior to the agreement.

Further, like in other agreements between adverse parties, it is best that the deal be in writing and placed on the record in the plea hearing.

A concern that is not common to other agreements is the possibility that an innocent defendant would be interested in a negotiated guilty plea in order to avoid exposure to a

greater sentence. A prosecutor who considers all of the factors in these standards is in the best position to avoid such a miscarriage of justice.

Part VI: Trial

1. Candor with the Court
2. Selection of Jurors
3. Relations with Jury
4. Opening Statements
5. Presentation of Evidence
6. Examination of Witnesses
7. Objections and Motions
8. Arguments to the Jury

1. Candor With The Court

6-1.1 False Statement
A prosecutor shall not knowingly make a false statement of fact or law to a court. If a prosecutor learns that a previous statement of material fact or law made to the court by the prosecutor is incorrect, the prosecutor shall correct such misstatement in a timely manner.

6-1.2 Legal Authority
A prosecutor shall inform the court of legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to his or her position.

6-1.3 False Evidence
A prosecutor shall not offer evidence that the prosecutor knows to be false. If a prosecutor learns that material evidence previously presented by the prosecutor is false, the prosecutor shall take reasonable remedial measures to prevent prejudice caused by the false evidence.

6-1.4 Ex Parte Proceeding
A prosecutor, in an ex parte proceeding authorized by law, shall inform the court of all material facts known to the prosecutor which he or she reasonably believes are necessary to an informed decision by the court.

Commentary

In order to make just, informed decisions, the court must have the most accurate information available regarding the facts and the law. A prosecutor, in his or her role as a minister of justice, must provide information to the court in an honest and forthright manner.

2. Selection of Jurors

6-2.1 Investigation
A prosecutor may conduct a pre-voir dire investigation of any prospective juror, but any such investigation shall not harass or intimidate prospective jurors. Prosecutors may conduct criminal history record checks of prospective jurors and, to the extent required by law or court order, share any conviction information with the court or defense for use in conducting the voir dire examination.

6-2.2 Voir dire Examination
A prosecutor should not (a) conduct voir dire examination in such a manner as to cause any prospective juror unnecessary embarrassment; or (b) intentionally use the voir dire process to present information that he or she knows will not be admissible at trial.

6-2.3 Peremptory Challenges
A prosecutor should not exercise a peremptory challenge in an unconstitutional manner based on group membership or in a manner that is otherwise prohibited by law.

6-2.4 Duration
A prosecutor should conduct selection of the jury without unnecessary delay.

6-2.5 Identity of Jurors
In cases where probable cause exists to believe that jurors may be subjected to threats of physical or emotional harm, the prosecutor may request the trial court to keep their identities from the defendant or the public in general.

Commentary

The primary purpose of the jury selection process is to empanel a jury that is representative of the community and does not have personal interests or prejudices for or against a party to the extent that they cannot render a verdict based upon the law and the facts. The standards set forth principles to be followed by prosecutors in conducting their part of the selection process.

In the permitted voir dire examination, consideration might be given to the court approved use of a questionnaire to gather basic information and serve as a time saving device.

In exercising peremptory challenges, the prosecutor should be mindful that as a representative of all of the people of his or her jurisdiction, it is important that none of those people be obstructed from serving on a jury because of their status as a member of a particular group.

The standard recognizes that in recent years jurors have sometimes been subjected to threats of violence. It recognizes the need to protect such jurors and adopts a probable

cause test for cases in which the prosecution may request the court to keep their identity from the defendant and the public.

3. Relations with Jury

6-3.1 Direct Communication
A prosecutor should not intentionally speak to or communicate with any juror or prospective juror prior to or during the trial of a case, except while in the courtroom with all parties and the judge present and on the record.

6-3.2 After Discharge
After the jury is discharged, the prosecutor may, unless otherwise prohibited by law, communicate with the jury as a whole or with any members of the jury to discuss the verdict and the evidence. In jurisdictions where permitted, the prosecutor may ask the court to inform jurors that it is not improper to discuss the case with the lawyers in the case after verdict, if the juror decides to do so. The prosecutor should not criticize the verdict, harass any juror, or intentionally seek to influence future jury service during such communication. A prosecutor should cease communication upon a juror's request.

Commentary

The prosecutor has a large responsibility in seeing that the criminal justice system is respected and improved. In that regard he or she must be careful to avoid any appearance of taking unfair advantage of a juror or jury. In post trial contact, the prosecutor should not criticize the verdict or jurors' actions, as such might be seen as an attempt to influence the behavior of a juror or a person with whom the juror confides in any future instance of jury service.

4. Opening Statements

6-4.1 Purpose
When permitted by law, a prosecutor may give an opening statement for the purpose of explaining the legal and factual issues, the evidence, and the procedures of the particular trial.

6-4.2 Limits
A prosecutor should not allude to evidence unless he or she believes, in good faith, that such evidence will be available and admitted into evidence at the trial.

Commentary

The prosecutor should be guided by the principle that the opening statement should be confined to assertions of fact that he or she intends or, in good faith, expects to prove. Although it may be acceptable for the prosecuting attorney to state facts that are expected to be proved, such assertions should be founded upon the prosecutor's good faith and reasonable basis for believing that such evidence will be tendered and admitted into

evidence. The prosecutor should be zealous in maintaining the propriety and fairness which should characterize his or her conduct as an officer of the court whose duty it is to competently represent the citizenry of the state in seeking justice. So long as the prosecutor's remarks are guided by good faith and a reasonable belief that such assertions will ultimately be supported by the admissible evidence, the prosecution will have fulfilled the basic requirements of an opening statement.

5. Presentation of Evidence

6-5.1 Admissibility
A prosecutor should not mention or display, in the presence of the jury, any testimony or exhibit which the prosecutor does not have a good faith belief will be admitted into evidence.

6-5.2 Questionable Admissibility
A prosecutor, when anticipating the use of testimony or exhibits of questionable admissibility, should endeavor to obtain a ruling on the admissibility of the testimony or exhibit prior to mentioning or displaying the same before the jury.

Commentary

Consistent with the concepts of fairness that should be embraced by the prosecutor, he or she should not expose the jury to evidence of questionable admissibility without first seeking a ruling from the court.

6. Examination of Witnesses

6-6.1 Fair Examination
A prosecutor should conduct the examination of all witnesses fairly and with due regard for their reasonable privacy.

6-6.2 Improper Questioning
A prosecutor should not ask a question that implies the existence of a factual predicate that the prosecutor either knows to be untrue or has no reasonable objective basis for believing is true.

6-6.3 Purpose of Cross-Examination
A prosecutor should use cross-examination as a good faith quest for the ascertainment of the truth.

6-6.4 Impeachment and Credibility
A prosecutor should not misuse the power of cross-examination or impeachment to ridicule, discredit, undermine, or hold a fact witness up to contempt, if the prosecutor knows the witness is testifying truthfully.

Commentary

If the criminal justice system is to retain credibility with the public, it must furnish a tribunal into which people can come to give information without the fear of being harassed or having their privacy unduly invaded. Our system requires that all witnesses, those brought in by both the prosecution and defense, be treated fairly. To ask a question that implies the existence of a factual predicate that is not true or for which the prosecutor has no reasonable objective basis for believing, is not fair and therefore not proper. Without such limitations, the overzealous prosecutor could use the examination of a witness to imply the existence of whatever evidence might be needed in the hope that the jury would not consider too closely the fact that it was never really introduced.

Because cross-examination is to be used as a good faith quest for the truth, a prosecutor who knows the witness is testifying truthfully should not attempt to ridicule, discredit, or undermine said witness. That does not mean that the prosecutor cannot cross-examine. The use of proactive techniques can elicit other information that is useful in establishing the prosecution's theory of the case.

In the end, if a prosecutor keeps in mind that his or her responsibility is to seek justice for all of the people of the community, then following the directives of these standards is simply a matter of common sense.

7. Objections and Motions

6-7.1 Procedure
When making an objection during the course of a trial, a prosecutor should formally state the objection in the presence of the jury along with a short and plain statement of the grounds for the objection. Unless otherwise directed by the court, further argument should usually be made outside the hearing of the jury.

6-7.2 Motions in Limine
A prosecutor should attempt to resolve issues relating to the admissibility of evidence prior to the swearing of the jury or, in non-jury adjudications, prior to the swearing of the first witness. Where permitted, this may be accomplished by the filing of and a hearing on a Motion in Limine. A prosecutor should also request the court to similarly resolve questions as to the admissibility of any defense evidence.

Commentary

The admissibility of evidence, exhibits, demonstrations, or argument is left to the court for determination. Prosecutors should be sufficiently acquainted with the rules of evidence so they are able to predict the admissibility of evidence to a high degree of probability.

When the prosecutor has a good faith belief that the evidence, exhibit, demonstration, or argument being offered is not admissible, he or she should object and give a short

statement of the basis for the objection. Since most, if not all, objections involve questions of law to be ruled upon by the trial court, the legal arguments are of little or no concern to the jury. Such argument may also refer to factual matters that have not, up to that point in the proceedings, been brought out by sworn testimony and which, additionally, may not be brought out and/or may be inadmissible. This should not, however, preclude the trial court from giving the jury an explanation of the basis for the objection and/or its ruling sufficient to dispel the questions that could normally arise in the minds of the jurors, so that no unfavorable inferences will be drawn by them reflecting upon a party.

In order to conserve the time of the jury, witnesses and other interested parties, the prosecutor should attempt to have questions regarding the admissibility of evidence resolved prior to trial. In addition to the savings of court time, the pre-trial rulings will also allow for more efficient pre-trial preparation and, where permitted, the appeal of adverse rulings.

8. Arguments to the Jury

6-8.1 Characterizations
In closing argument, a prosecutor should be fair and accurate in the discussion of the law, the facts, and the reasonable inferences that may be drawn from the facts.

6-8.2 Personal Opinion
In closing argument, a prosecutor should not express personal opinion regarding the justness of the cause, the credibility of a witness or the guilt of the accused, assert personal knowledge of facts in issue, or allude to any matter not admitted into evidence during the trial.

Commentary

Faced with closing argument, the final opportunity to espouse the people's theory of the case, prosecutors need to be keenly aware of the limitations on the methods available to them for that use. Closing arguments have been the ticket back to the trial court from many appellate courts that have uttered the words "prosecutorial misconduct" in relation to words uttered by the prosecutor.

These standards set forth the basic rules for guidance in constructing and delivering a closing argument. Prosecutors should become intimately familiar with his or her jurisdiction's ethical rules and appellate opinions on proper closings.

Part VII: Sentencing

1. Sentencing
2. Probation
3. Community Based Programs
4. Parole/Early Release

1. Sentencing

7-1.1 Fair Sentencing
To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided.

7-1.2 Sentencing Input
The prosecutor may take advantage of the opportunity to address the sentencing body, whether it is the jury or the court, and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is not denied his or her rights to address the sentencing body.

7-1.3 Mitigating Evidence
The prosecutor should disclose to the defense prior to sentencing any known evidence that would mitigate the sentence to be imposed. This obligation to disclose does not carry with it additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

7-1.4 Pre-Sentencing Reports
The prosecutor should take steps to ensure that sentencing is based upon complete and accurate information drawn from the pre-sentence report and any other information the prosecution possesses.

a. The prosecutor should disclose to the court or probation officer any information in its files relevant to the sentencing process.

b. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

Commentary

Participation in the sentencing process provides the prosecutor the opportunity to continue his or her quest for justice. The prosecutor should be the person most familiar with the defendant, the facts surrounding the commission of the crime, and the procedures that brought the defendant to the sentencing stage. It is also the prosecutor who, from prior experience, will be aware of the sentences received by persons in similar situations so as to steer the court away from unfair sentences and unfair sentence disparities.

Sentencing participation also provides the prosecutor with an opportunity to assure that the victims of crimes are allowed to voice their thoughts and opinions regarding the sentence to be imposed. Sentencing further provides the means for the prosecutor to make sure the defendant is treated fairly by making mitigating evidence in his or her possession available to the defense and to ensure that the information provided to the court in the form of a pre-sentence investigation report is accurate.

2. Probation

7-2.1 Role in Pre-Sentence Report
The prosecutor should take an active role in the development and submission of the pre-sentence report, including the following:

a. The office of the prosecutor should be available as a source of information to the probation department concerning a defendant's background when developing pre-sentence reports;
b. The office of the prosecutor should review pre-sentence reports prior to or upon submission of such reports to the court; and
c. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

7-2.2 Prosecutor as a Resource
The office of the prosecutor should be available as a source of information for the probation department for offenders under supervision.

7-2.3 Notice
The office of the prosecutor should seek to be notified of and have the right to appear at probation revocation and termination hearings and be notified of the outcome of such proceedings within the jurisdiction.

3. Community-Based Programs

7-3.1 Knowledge of Programs
The prosecutor should be cognizant of and familiar with all community-based programs to which defendants may be sentenced or referred to as a condition of probation.

7-3.2 Prosecutor as a Resource
To the extent permitted by law, the prosecutor should be available as a source of information for community-based agencies that provide services to probationers.

Commentary

The prosecutor's relationship with the probation department must continue beyond the preparation of the pre-sentence report. If a defendant is placed under the supervision of the probation department or another community based program, the prosecutor, as a guardian of the public interest in seeing that the court's directives to the defendant are

followed, should share information and, where allowed, assist the probation office and other programs in bringing a non-complying person back before the court.

Part VIII: Post-Sentencing

1. Post-Sentencing

8-1.1 Cooperation of Trial and Appellate Counsel
To the extent the appellate prosecutor is not the trial prosecutor, the appellate prosecutor and trial prosecutor should cooperate with each other to ensure an adequate flow of information. When feasible, prior to confession of error, the appellate prosecutor should inform the trial prosecutor and obtain his or her input on any issue in question.

8-1.2 Duty of Prosecutor to Defend Conviction
Subject to Standards 8-1.4 and 8-1.8, the prosecutor should defend a legally-obtained conviction and a properly-assessed punishment. A prosecutor has the duty, consistent with the responsibility as a minister of justice, to require the convicted person to meet the applicable burden of proof to obtain relief on both appeal from or collateral attack of a conviction.

8-1.3 Prosecution Appeals
Subject to Standard 8-1.4, the prosecutor should appeal pre-trial and trial rulings when appropriate and when it is in the interests of justice to do so.

8-1.4 Argument on Appeal
The prosecutor shall not assert or contest an issue on appeal unless there is a basis in both law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

8-1.5 Appeal Bonds
The prosecutor should defend against the efforts of convicted defendants to be released on appeal bond unless there is reason to believe that the conviction is no longer supported by the law or evidence or opposition to the bond would create a manifest injustice.

8-1.6 Collateral Review
The prosecutor shall not assert or contest an issue on collateral review unless there is a basis in law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

8-1.7 Duty to Cooperate in Post-Conviction Discovery Proceedings
A prosecutor shall provide discovery to the defense attorney during post-conviction proceedings where (1) required to do so by law, court order or rule, (2) the evidence is constitutionally exculpatory, or (3) he or she reasonably believes that the convicted person's claim of actual innocence is supported by specific factual allegations which, if

true, would entitle the convicted person to relief under the legal standard applicable in the jurisdiction, and the evidence relates to that claim. A prosecutor may require a specific offer of proof to establish a claim of actual innocence before the prosecutor agrees to take any affirmative action in response to a post-conviction request for discovery.

8-1.8 Duty of Prosecutor in Cases of Actual Innocence

When the prosecutor is satisfied that a convicted person is actually innocent, the prosecutor should notify the appropriate court, unless the court authorizes a delay, in addition to the defense attorney or the defendant (if the defendant is not represented by counsel) and seek the release of the defendant if incarcerated. If the prosecutor becomes aware of material and credible evidence which leads him or her to reasonably believe a defendant may be innocent of a crime for which the defendant has been convicted, the prosecutor should disclose, within a reasonable period of time, as circumstances dictate, such evidence to the appropriate court and, unless the court authorizes a delay, to the defense attorney or to the defendant, if the defendant is not represented by counsel.

Commentary

Assuming that the prosecutor has been diligent in performing his or her duties in the quest for justice throughout the investigation, screening, charging, discovery, trial and sentencing, the continued quest for justice requires his or her continued best efforts in responding to the defendant's appeal or collateral attacks. Those best efforts require cooperation with trial counsel and examination of the record to determine whether any appeal on issues decided unfavorably to the prosecution should be addressed, where permitted.

As in all other dealing with the court, the prosecutor on appeal must base his or her arguments on the facts and the law. Because there is no longer a presumption of innocence, prosecutors should typically oppose an appeal bond unless there is an unusual circumstance that would indicate that a conviction is no longer supported by the law or the evidence.

In those extremely rare instances in which a prosecutor is presented with credible evidence that a convicted person may actually be innocent, these standards set forth his or her responsibilities that are consistent with the role of the prosecutor as a minister of justice. In fulfilling that role, the prosecutor must strike a balance between his or her responsibility to see that valid convictions are upheld and the duty to see that the innocent are protected from harm. Finding that balance will perhaps pose the greatest challenge a prosecutor will have to face, especially in a situation where the evidence, after being reasonably evaluated, indicates that a mistake has been made. In making the reasonable evaluation, the prosecutor must put aside concerns of personal embarrassment and pride, the possible embarrassment to law enforcement, and any other factors that would deter him or her from seeing that justice is accomplished.

（三）刑事司法部門之準則

第一編　通則

3-1.1 準則之功能

本準則旨在作為職業行為與職務執行之指引。本準則之目的不在於作為檢察官違反專業規範之行為是否因而影響有罪判決效力之司法審查的準據。本準則之規範內容可能與前述司法審查相關聯，亦可能無所關聯，端視各別情況而定。

3-1.2 檢察官之職責

(a) 檢察機關在其司法管轄區域內負有犯罪訴追之責任。
(b) 檢察官兼具司法行政官、辯護人及法院司法人員之身分；檢察官必須審慎執行其職務。
(c) 檢察官的責任在於追求正義之實現，非僅單純追求起訴定罪而已。
(d) 檢察官負有促進刑事司法革新之重要職責。當檢察官發覺實體法或程序法之規定有未盡完備或未合乎公平正義者，應竭力謀求改善之道。
(e) 檢察官有責任知悉並遵循由可適用之職業慣例、職業倫理法規及其所屬司法管轄區域內之法律所界定之職業行為準則。檢察官應使用依本準則4-1.5規定

而設立之諮詢評議委員會所提供之檢察官守則。

3-1.3 利益衝突

(a) 檢察官執行法定職務時應避免發生利益衝突。
(b) 檢察官不得在其所屬司法管轄區域內擔任刑事訴訟程序中之被告代理人。
(c) 除法律另有規定明確允許之外，檢察官不應參與其曾於個人執業時或於非政府機關工作時自身或實際參與之案件；但若依應適用之法律規定，無他人或經合法授權之人可在該案件中代替該檢察官者，不在此限。
(d) 檢察官不應將其先前於個人執業時因受任事件而取得有關委任人之資訊，作為不利於該委任人之使用。但此資訊非屬律師與委託人間保密義務之適用範圍或此資訊已公開者，不在此限。
(e) 除法律另有規定明確允許外，檢察官不應在其自身或實際參與之案件中，與任何被告或被告之辯護人或代理人磋商私人聘僱事宜。
(f) 檢察官不應任許其政治上、財務上、商業上、財產上或個人之利益影響其專業判斷及責任。
(g) 檢察官若知悉其與被告的律師間有父母、子女、兄弟姊妹或配偶等親屬關係，即不得參與該被告之追訴程序。檢察官若知悉其與被告的律師間有重要的私人或財務關係，亦不得參與該被告之追訴程序。但該檢察官若經其上級主管知情並核准，或已無其

他檢察官可被授權替代該檢察官者，則不在此限。

(h) 檢察官不應向被告或證人推薦任何辯護律師，除非被告或證人提出要求。檢察官也不應推薦任何與他有利益關係的辯護律師。檢察官亦不應向被告或證人對辯護律師的名聲或能力作出任何評價，除非被告或證人提出要求。

3-1.4 公開言論

(a) 檢察官不得發表或授權發表其明知或可得而知足使刑事訴訟程序實質上有受預斷之虞且將散播於不特定多數人之司法程序外言論。

(b) 檢察官應盡相當之注意義務以防止調查人員、執法人員、僱員、其他參與人員或與檢察官相關人員為本準則所禁止之司法程序外言論。

3-1.5對不當行為之回應義務

(a) 凡檢察官發現與檢察機關相關之人意圖以作為或不作為之方式，違反檢察機關之法定義務或法令，檢察官應遵循檢察機關有關此類事項的規定。若無相關規定或此類規定無實益者，在可行並能及時有效防止此類不當行為的情況下，檢察官應命行為人重新審酌系爭作為或不作為之妥適性。若命行為人重新審酌之命令為無實益、不適宜、不可行，或因情節重大而有必要時，檢察官應將此案件呈報上級，

其情節重大者，並應通知首席檢察官。

(b) 若首席檢察官無視檢察官依前項規定所為之處置，並採取顯然違背法令之作為或不作為，檢察官應採取進一步的救濟措施，如向該檢察機關以外之其他相關政府機關揭露得以救濟此違法行為之必要資訊。

第二編　檢察機關之組織

3-2.1 具檢察權限之公務員

檢察職權應由檢察官執行之。檢察官應以須受專業行為規範及懲戒之律師充之。

3-2.2 州內各檢察機關間之相互關係

(a) 地方檢察權責隸屬於地區、縣或市檢察官。檢察單位應盡可能按人口、案件負荷量及其他相關因素為設置依據，以足資確保每一檢察單位至少有一名專任檢察官及為執行檢察職權所必須之輔助人員。

(b) 在某些州，因其地理位置和人口之情況特殊，得設立全州性之檢察系統，以州檢察長為檢察首長，地方檢察官為其代理人。

(c) 各州應設置統合州內各檢察機關執行刑事訴追政策之機關，以促進司法之革新，並確保全州執行刑事法律之步調一致。各州應設立州檢察官評議委員會。

(d) 州政府應在需求範圍內集中提供資金，以維持設置支援性質的資源及人員，包括實驗室、調查員、會計員、特別顧問及其他專家，並使所有地方檢察官得以使用之。

3-2.3 確保高度專業技能

(a) 檢察職權之行使須有高度之專業技能。為有效達成前述目標，應在檢察職務之各種層面中，促進檢察官持續執行勤務及擴展相關經驗。
(b) 檢察機關首長及其幕僚人員宜盡可能專職。
(c) 專業能力應為選任檢察機關人員之基礎。檢察官選任幕僚人員不應受政治黨派之影響。
(d) 應致力招募符合資格的女性和少數族群之成員成為檢察機關人員。
(e) 為達專業化目的並鼓勵稱職之律師擔任檢察職位，檢察官及其幕僚人員之待遇應與其職位所負之重任相稱，並與民間同行之待遇相當。

3-2.4 特別助理、調查研究資源、專家

(a) 應提供經費使檢察官得以指定嫻熟於參與刑事法庭活動之人員充任特別助理，以協助處理特定案件或一般案件。
(b) 應提供經費使檢察官在其職務範圍內得以聘用並直接指揮監督常任調查人員及其他必要之輔助人員；

同時並應提供經費使檢察官得以聘用合格之專家，俾利特定案件之偵辦。

3-2.5 檢察官手冊；政策指南及處務規程

(a) 各檢察機關應訂頒（i）檢察官行使裁量權應行注意事項及(ii)檢察機關處務規程。訂頒上開應行注意事項及處務規程之目的乃為達成公平、迅速並有效執行刑事法律。
(b) 為求一貫性和明確性，前項應行注意事項及處務規程應載明於該檢察機關手冊。該手冊應對外公開，但其內容若涉及機密而其公開恐有害於檢察機關職權之行使者，不在此限。

3-2.6 訓練計畫

檢察機關應訂定內部訓練計畫，俾以訓練新進人員及提供屬員在職教育。檢察官在職教育計畫應予擴展，且應提供經費使檢察官均能參加前述在職教育計畫。

3-2.7 與司法警察之關係

(a) 檢察官對於司法警察偵查刑事案件應提供法律上之意見。
(b) 檢察官應與受其指揮監督之司法警察合作，並提供檢察幕僚人員以協助司法警察之專職訓練，俾使司

法警察能依法適法的執行職務。

3-2.8 與法院及律師之關係

(a) 檢察官不得就案件事實或法律事項對法院故意為虛偽之陳述。

(b) 檢察官執行職務時，勢必與管轄區內之法官經常接觸，在此類接觸中，檢察官應力求維持彼此間形式上及實質上之正確關係，以符合司法傳統、司法倫理規範及相關法律所要求辯護人及法官間關係之標準。

(c) 檢察官不得就已繫屬或將即將繫屬之特定案件，越權與承審法官單方討論案情或提供訴訟資料。

(d) 檢察官不應怠於向審判機關揭露對檢察官不利之特別管轄情事，縱使該不利之特別管轄情事未被辯護人揭露。

(e) 檢察官應致力於建立其與辯護人間良好之工作關係，以利於解決道德倫理層面的問題。尤其在陪審團確立辯護人的當事人有罪之前，辯護人若認有必要提出與未決案件或調查有關之事證時，檢察官應確保辯護人提出的該項事證不會作為對被告不利之證據。然若以證明被告犯罪或詐欺為目的，則毋庸禁止檢察官在後續之訴訟程序中提出該項證據。

3-2.9 迅速追訴

(a) 檢察官應避免無正當理由拖延案件之進行。檢察官起訴時，應妥慎及迅速。
(b) 在無合法依據時，檢察官不得故意利用訴訟上之規定拖延訴訟。
(c) 檢察機關之組織及其人員、設施之配備，應足使檢察官得為迅速之刑事追訴。檢察官應準時蒞庭執行職務，並及時提出所有聲請書、訴訟要旨書及其他文件。檢察官應向所有證人說明準時出庭之重要性。
(d) 檢察官不得為達到訴訟程序延期進行之目的，而故意為虛偽陳述或以其他方法誤導法院。
(e) 檢察官在未獲得額外資金以增加支援人力之情形下，不應承擔過多足以干擾其工作品質之工作量，因為過度之工作負荷可能會損及控訴妥速與否之司法利益，抑或可能導致職業義務之違反。

3-2.10 檢察官之調換

(a) 應制訂適當之法律，確立程序，俾使州長或其他民選之政府官員得依法律之授權，經相當之公開調查後，認定地方檢察官無法勝任其職務時，得以停止該檢察官之職權或以他人替代其執行職務。
(b) 州長或其他民選之政府官員依法對於各別案件或特定類型案件，經透過公開調查後，認有保護公共利

益之必要時，有權指定特別律師替代地方檢察官。

3-2.11 書面或媒體協議

檢察官在尚未考量所有面向得出結論之前，不得藉由著手進行任何描述或報導該真實案件相關資訊之書面或媒體協議，以資獲取利益。

第三編　起訴與否之調查

3-3.1 檢察官之調查權

(a) 檢察官通常受司法警察及其他調查機關之協助而偵查犯罪行為。但其他調查機關就有犯罪嫌疑之行為未為妥適處理時，檢察官有義務即為調查。
(b) 檢察官於偵查或決定起訴與否時，不得因其種族、宗教、性別、性向、民族而為差別待遇，亦不得不當使用其於偵查活動中之裁量權。
(c) 檢察官不得故意使用非法方法取得證據，或僱用、指示、鼓勵他人使用該等以非法方法所取得之證據。
(d) 檢察官不得阻止或妨礙即將作證之人與辯護律師間之聯繫。檢察官亦不得建議或促使任何有權利交付辯護資料之人拒絕交付該等資料。
(e) 除非法律授權，否則檢察官不得使用任何致人誤信有傳票性質或類似法院傳票之通知，以資確使關係人到場應訊。

(f) 檢察官不得承諾其將對可能的犯罪行為不予追訴，但該犯罪行為若屬監控下之偵查計畫之一部者，不在此限。

(g) 檢察官應避免在無第三人在場之情形下與即將作證之人面談。但檢察官準備放棄在庭提出證人於面談時之供述與在審判中之證述不符，以彈劾該證人證述之可信性；或檢察官準備請求法院准予其迴避擔任該案件檢察官之職務，俾便提出該供述以駁斥證人之證述者，不在此限。

3-3.2 與被害人及即將作證之人之關係

(a) 檢察官不得因作證而給付專家證人以外之其他證人報酬，但補償證人合理之出庭費、依法律或法院之規定提供證言費，或審前晤談之費用者，不在此限。以證人無意圖隱藏實際支出為前提，證人費用尚得包括旅費與所得之損失。

(b) 檢察官與證人面談前，應先告知其有不自證己罪之權利，以及得隨時選任辯護人之權利。當檢察官知悉或可合理預見證人可能成為刑事追訴之對象時，亦適宜對證人為上開權利告知。然而，檢察官不得藉由上開權利告知而影響證人作有利或不利之證述。

(c) 檢察官應依與該案件有利害關係之被害人及證人之請求而給予案件相關資訊。

(d) 檢察官應確保被害人及證人受到適當合理之保護，以避免遭受威脅。

(e) 檢察官應確保被害人及證人於期日變動時能儘速收到通知，以確保其能出庭參與司法程序。

(f) 檢察官不應任意要求被害人或證人出庭參與司法程序，但其證言為追訴所必要或為法律所要求者，不在此限。若有必要請其出庭，檢察官應設法將其因而耗費的時間降至最低。

(g) 檢察官應設法確保重罪的被害人或其代表能收到下列事項的即時通知：

(1)與被害人有關的司法程序；

(2)該案件之裁決，包括認罪協商、審理與判刑等；

(3)案件中任何會導致被告暫時或永久釋放的決定或行為。

(h) 無論最終是否起訴、依據被告答辯作何種處遇、撤回控訴與否，檢察官均應盡可能設法確保重罪的被害人或其代表有機會於檢察官作出最後決定前，與檢察官洽談並提供資訊給檢察官。

3-3.3 與專家證人之關係

(a) 檢察官若聘請專家證人作證，應尊重其獨立性，且不得指示該專家證人就待證事項為特定內容之意見陳述。在必要範圍內，檢察官應向專家證人解釋其在審判中係扮演協助事實發現之中立角色，並說明審判中詰問證人之進行方式。

(b) 檢察官不得為影響專家證人之證詞而支付過高酬勞，亦不得視專家證人之證詞內容或案件判決結果

而決定酬勞數額。

3-3.4 控告及起訴與否之決定

(a) 檢察官應負開啟刑事訴訟程序之首要責任。
(b) 檢察官應盡相當之注意義務以確保受其指揮或授權之調查人員就逮捕狀或搜索狀之簽發程序受有足夠之訓練，並告知調查人員就有疑義或困難之案件應報請檢察官許可。
(c) 檢察官應建立一套評估準則及程序以資決定經控告之事實是否應提起公訴。
(d) 如法律允許人民直接向司法官員或大陪審團提出控告者，控告人應先向檢察官提出控訴，以徵得檢察官核可，嗣檢察官應將其所決定採取之行動或建議通知司法官員或陪審團。

3-3.5 與大陪審團之關係

(a) 檢察官依法擔任大陪審團的法律顧問時，應妥適解釋法律並對證據在法律上之重要性表示意見，但應適度尊重大陪審團作為獨立法律團體之地位。
(b) 檢察官不得持在正式審判中之小陪審團前不被允許之陳述或爭執方式，用以影響大陪審團之決定。
(c) 檢察官在大陪審團中所為之一切陳述及行為應記明筆錄

3-3.6 於大陪審團提出之證據質性與範圍

(a) 檢察官於大陪審團所為之陳述與主張以及所提出之證據，以檢察官相信適當或法律有授權者為限。在適當之案件中，檢察官可提出其相信能在審判中出席之證人來總括檢察官所提出之一切具證據能力之證據。檢察官應告知大陪審團其有權聽取包括目擊證人在內之任何可得之證人之證述。

(b) 檢察官不得故意不向大陪審團揭露足以否定被告犯罪或減輕被告罪責之證據。

(c) 檢察官相信所提證據依據其應適用之法律，不足以支持起訴時，應向大陪審團建議不予起訴。

(d) 如檢察官認為證人可能成為被告時，檢察官不應在未告知證人其可能被訴以及其有權選任辯護人提供法律意見保障其權益之前，即強迫該證人對大陪審團為證述。

(e) 如證人之行為為調查之客體，且證人事前已表示若經傳喚將行使憲法上拒絕證言之基本權利時，檢察官即不得強迫其出席大陪審團之審訊。但檢察官欲就該拒絕證言權之合法性提出異議，或欲依法豁免對該證人進行追訴者，不在此限。

(f) 檢察官不得故意干預大陪審團之獨立性、僭越大陪審團之功能，或濫用大陪審團之程序。

(g) 檢察官不得利用大陪審團來獲取物證、書證或供述證據，以協助檢察官準備對已被大陪審團或檢察官起訴之被告進行審判，但該司法管轄區內之法律准

許者不在此限。

(h) 檢察官不應利用大陪審團協助或支助任何行政調查，但該司法管轄區內之法律准許者不在此限。

3-3.7 檢察官起訴所需證據之質性及範圍

如檢察官依法得以起訴狀起訴時，檢察官起訴與否之決定應依本準則3-3.6及3-3.9所規定之原則為之。

3-3.8 非刑事處分之裁量權

(a) 檢察官就適當的案件決定起訴與否時，應考量包括是否給予正式或非正式的非刑事上處分之可能性；尤其對於初犯，得因犯罪之性質而予以非刑事之處分。

(b) 檢察官應熟悉相關之社會機構及資源，俾以協助其評估案件是否適宜給予刑事程序以外之轉化程序。

3-3.9 控告及起訴之裁量

(a) 檢察官如明知無起訴之相當理由，即不得自行起訴、請求起訴或使起訴狀態持續。如可採用之證據不足以支持有罪判決時，檢察官亦不得自行起訴、請求起訴或使起訴狀態持續。

(b) 檢察官對於證據可供支持的罪名無須一律起訴。在符合特定情況且有符合公共利益之正當理由時，即

使可能有充分證據足以支持有罪判決，檢察官仍得不予追訴。檢察官行使其裁量權時，得斟酌下列例示狀況與其他因素：

(1)檢察官對被告事實上是否有罪存有合理懷疑；

(2)犯罪所引起之危害程度；

(3)法定處罰就該行為人或該行為而言顯不相當；

(4)控告人之控訴可能出於不當動機；

(5)被害人不願作證；

(6)被告對於逮捕或協助其他被告定罪之合作態度；

(7)由其他管轄地區起訴之可能性。

(c) 檢察官不得因其上級長官之要求而對合理懷疑被告無罪之案件起訴。

(d) 檢察官為起訴決定時，不得考量其個人或政治上的利益或不利益，亦不得將提高其定罪率之意圖作為考量因素。

(e) 涉及嚴重危害公眾的案件時，檢察官不得因該管轄法院之陪審團對此類特定案件傾向宣告被告無罪，即不予起訴。

(f) 檢察官所起訴或尋求定罪之罪名不得超過審判中證據可以合理支持之程度，或是超過公正反映被告罪責所必要。

(g) 檢察官不得以被告放棄民事賠償作為放棄追訴、撤回起訴或其他類似行為之條件。但被告係明知且理智、自由且自願放棄其權利，且經法院認可者，不在此限。

3-3.10 初次審訊與預審程序中之角色

(a) 除被告捨棄辯護權外，檢察官於初次審訊前，不得與被告接觸。但為協助被告選任辯護人或為協助被告於審判前獲得釋放者，不在此限。檢察官應盡力確保被告經告知有選任辯護人之權利，並有合理之機會得以選任辯護人。
(b) 檢察官應於審前程序中協力促使被告獲釋。
(c) 檢察官不得試圖使未選任辯護人之被告放棄重要的審前權利，例如預審權。
(d) 檢察官不得一面尋求大陪審團之起訴，一面卻為規避預審程序而請求延期審理。
(e) 被告經逮捕羈押後，除有正當理由者外，檢察官不得拖延預審程序。
(f) 檢察官在依法進行的預審程序中應始終在場。

3-3.11 檢察官之證據揭示

(a) 檢察官在最初可能之際，不得故意不向被告及時揭示可否定被告被控罪名或減輕被告刑責之所有事證。
(b) 檢察官應恪遵法定證據開示程序之規定。
(c) 檢察官不得因其認為證據將妨礙案件之追訴或有利於被告而故意不為蒐集。

第四編　認罪協商

3-4.1 認罪協商之利用

(a) 檢察官應使大眾知悉關於與辯方律師以認罪協商方式處理刑事起訴之政策或意願。
(b) 檢察官不得直接與有選任辯護人之被告進行認罪協商，但經辯護人同意者，不在此限。當被告已依法捨棄受辯護權時，檢察官得直接與被告進行認罪協商，但其內容須記錄並留存。
(c) 檢察官與辯護人或被告進行認罪協商時，不得故意就事實或法律為虛偽不實之聲明或陳述。

3-4.2 認罪協商之達成

(a) 檢察官不得對被告或其辯護人就法院宣告刑度或緩刑為任何承諾或保證；但檢察官得適度告知其對於法院判決結果所可能採取之立場。
(b) 檢察官不得就其對於案件裁判之影響力為誇大不實之暗示。
(c) 檢察官應履行認罪協議，但被告未履行認罪協議或存有其他正當情事者，不在此限。

3-4.3 停止追訴處分之理由記載

檢察官若對重罪案件決定依職權停止追訴者（或為其

他相類似之處分），應詳細記載其處分之理由。

第五編　審判

3-5.1 庭期之排定

庭期應由法院排定。檢察官應將與排定庭期有關之事項告知法院。

3-5.2 法庭上之專業水準

(a) 身為法院之司法人員，檢察官應恪守職業規範，並對於法官、對造律師、證人、被告、陪審員及其他法庭在場者展現其專業態度，以維護法院之威信與法庭之尊嚴。
(b) 開庭時，檢察官應向法院而非對造律師陳述與該案相關之所有事證。
(c) 檢察官應遵從法院之處分命令及訴訟指揮，但對於不利之裁定，及認有偏頗之訴訟指揮行為，有聲明不服之職責。檢察官有權就上述不利之裁定請求為重新審查。
(d) 檢察官應與各法院及律師公會協力研訂該管轄地區之法庭禮儀規則及職業規範。

3-5.3 陪審員之選擇

(a) 檢察官應於開庭前就陪審團之選定及對於陪審團附理由或不附理由之拒卻妥為準備，以期有效發揮檢察功能。
(b) 如有於開庭前調查陪審員個人背景資料之必要，檢察官所採取之調查方法，不得有不當騷擾、為難該準陪審員或侵害其隱私之情事，且該調查應限於現存之紀錄及資訊。
(c) 檢察官僅得在善盡拒卻權所需獲致資料之目的範圍內親自質問陪審員。檢察官不得故意利用陪審員適任性之預審程序，提出其明知在審判中不容許提出之實體事項，或就該案進行辯論。

3-5.4 與陪審團之關係

(a) 檢察官不得於審理前或審理期間，私下接觸受到陪審召集或已被任命為陪審員之人。檢察官應避免任何前述形式上或實質上之不適當接觸。
(b) 檢察官對於陪審員應表現適當的尊重，並避免對陪審員生活上之舒適及便利過分關切而於形式上或實質上討好陪審員。
(c) 陪審團對案件已執行職務完畢後，檢察官不得意圖騷擾或為難而故意批評或質問陪審員，以致影響其將來再任陪審員時之判斷。若檢察官認為陪審團之裁判可能有法律爭議，在未有法令禁止的情況下，

得與陪審員適度溝通，以釐清該等爭議。

3-5.5 開場陳述

檢察官所為開場陳述，應限於與該案件相關爭點之陳述；檢察官所欲提出之證據，應以其基於善意確信在審理中可取得且有證據能力者為限。檢察官不得於此間接提及任何證據，但本諸善意並有合理基礎確信上開證據將被提出且具有證據能力者，不在此限。

3-5.6 證據之提出

(a) 檢察官不得故意提出不實之證據，不論該證據為書證、物證或供述證據，且應於發現該證據不實後予以撤回。
(b) 檢察官在法官或陪審團面前，不得為達到吸引法官或陪審團對於欠缺容許性之事證的注意力之目的，而故意提出不具證據能力的證據，或提出顯然會遭合法異議之問題，或為其他不被允許之評論及辯論。
(c) 檢察官不得容許在法官或陪審團面前出示任何可能使心證產生偏見之實體證據，但適時且善意提出前述證據者，不在此限。
(d) 檢察官不得在法官或陪審團面前提出任何可能使心證產生偏見之實體證據，但若有合理基礎可認為前述證據具有證據能力者，不在此限。就前述證據是

否具證據能力有任何實質之疑義時，應即舉證澄清之，並於獲得准許提出之裁定後，方得提出之。

3-5.7 證人詰問

(a) 在訊問證人時應公平、客觀的進行，且應適度兼顧證人的尊嚴及其合法隱私權，並應避免不必要的脅迫及羞辱。
(b) 縱使檢察官確信證人所述屬實，亦不能排除反詰問程序之進行，但得限制反詰問之方法及範圍。檢察官若知該證人係據實作證者，即不得利用反詰問權予以詆毀或降低其證言之可信性。
(c) 檢察官若已知證人將合法主張拒絕證言權者，即不得傳喚該證人於陪審團前作證。
(d) 檢察官所詢問之問題，不得隱含其自己亦無善意確信真實存在之事實基礎。

3-5.8 對陪審團所為之陳述

(a) 檢察官向陪審團為終結辯論時，得主張所有自卷內證據所能合理推論之結果。檢察官不得故意誤述證據或是誤導陪審團對證據之推論。
(b) 檢察官不得對於任何證言或證據之真偽或被告有罪與否表達其個人確信或意見。
(c) 檢察官不得提出以使陪審團產生偏見為目的之主張。

(d)檢察官應避免所提主張致使陪審團偏離僅能依憑證據認定案件事實之責任。

3-5.9 卷外事實

除依一般人之智識經驗而言，為公眾所週知或法院職務所知悉之事實外，檢察官不應在審判或上訴中故意陳述或引用非卷內資料可證明之事實。

3-5.10 檢察官於裁判後之評論

檢察官不應對於法官或陪審團之裁判為公開之評論。

第六編　量刑

3-6.1 檢察官在量刑程序中之角色

(a) 檢察官不得以量刑的嚴苛程度做為其辦案是否優異的指標。在參與量刑程序之範圍內，檢察官應極力保障法院量刑判決之公平性，而且係依據充分資料所作成，並應避免不公平差別量刑之產生。
(b) 如量刑係由法院為之，並無陪審團參與時，應賦予檢察官在量刑程序中有向法院陳述意見及求刑之機會。
(c) 如量刑係由陪審團為之，檢察官應依該管轄地區有關之規定對量刑之爭點提出證據，但檢察官所提出

有關量刑之證據應避免使陪審團對罪責之決定發生偏頗。

3-6.2 與量刑相關之資料

(a) 檢察官應協助法院使其量刑係依據完整及正確之量刑前調查報告。檢察官應向法院提供其所持有的一切有關量刑的資訊。若檢察官知悉量刑前調查報告之內容有不完足或不正確之情形，應設法提供法院及辯護人完整及正確之資訊。

(b) 檢察官應於量刑程序前或程序中，向法院及辯護人揭露其所知一切足以減輕被告刑度之資訊，但法院保護令所命應保密之事項，不在此限。

Prosecution Function

Prosecution Function
PART I.
GENERAL STANDARDS

Standard 3-1.1 The Function of the Standards

These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of the prosecutor to determine the validity of a conviction. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

Standard 3- 1.2 The Function of the Prosecutor

(a) The office of prosecutor is charged with responsibility for prosecutions in its jurisdiction.
(b) The prosecutor is an administrator of justice, an advocate, and an officer of the court; the prosecutor must exercise sound discretion in the performance of his or her functions.
(c) The duty of the prosecutor is to seek justice, not merely to convict.
(d) It is an important function of the prosecutor to seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, he or she should stimulate efforts for remedial action.

(e) It is the duty of the prosecutor to know and be guided by the standards of professional conduct as defined by applicable professional traditions, ethical codes, and law in the prosecutor's jurisdiction. The prosecutor should make use of the guidance afforded by an advisory council of the kind described in standard 4-1.5.

Standard 3-1.3 Conflicts of Interest

(a) A prosecutor should avoid a conflict of interest with respect to his or her official duties.

(b) A prosecutor should not represent a defendant in criminal proceedings in a jurisdiction where he or she is also employed as a prosecutor.

(c) A prosecutor should not, except as law may otherwise expressly permit, participate in a matter in which he or she participated personally and substantially while in private practice or nongovernmental employment unless under applicable law no one is, or by lawful delegation may be, authorized to act in the prosecutor's stead in the matter.

(d) A prosecutor who has formerly represented a client in a matter in private practice should not thereafter use information obtained from that representation to the disadvantage of the former client unless the rules of attorney-client confidentiality do not apply or the information has become generally known.

(e) A prosecutor should not, except as law may otherwise expressly permit, negotiate for private employment with any person who is involved as an accused or as an attorney or agent for an accused in a matter in which the prosecutor is participating personally and substantially.

(f) A prosecutor should not permit his or her professional judgment or obligations to be affected by his or her own political, financial, business, property, or personal interests.

(g) A prosecutor who is related to another lawyer as parent, child, sibling, or spouse should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. Nor should a prosecutor who has a significant personal or financial relationship with another lawyer participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer, unless the prosecutor's supervisor, if any, is informed and approves or unless there is no other prosecutor authorized to act in the prosecutor's stead.

(h) A prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses unless requested by the accused person or witness to make such a recommendation, and should not make a referral that is likely to create a conflict of interest. Nor should a prosecutor comment upon the reputation or abilities of defense counsel to an accused person or witness who is seeking or may seek such counsel's services unless requested by such person.

Standard 3-1.4 Public Statements

(a) A prosecutor should not make or authorize the making of an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the prosecutor knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding.

(b) A prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement that the prosecutor would be prohibited from making under this Standard.

Standard 3-1.5 Duty to Respond to Misconduct

(a) Where a prosecutor knows that another person associated with the prosecutor's office is engaged in action, intends to act or refuses to act in a manner that is a violation of a legal obligation to the prosecutor's office or a violation of law, the prosecutor should follow the policies of the prosecutor's office concerning such matters. If such policies are unavailing or do not exist, the prosecutor should ask the person to reconsider the action or inaction which is at issue if such a request is aptly timed to prevent such misconduct and is otherwise feasible. If such a request for reconsideration is unavailing, inapt or otherwise not feasible or if the seriousness of the matter so requires, the prosecutor should refer the matter to higher authority in the prosecutor's office, including, if warranted by the seriousness of the matter, referral to the chief prosecutor.

(b) If, despite the prosecutor's efforts in accordance with section

(a), the chief prosecutor insists upon action, or a refusal to act, that is clearly a violation of law, the prosecutor may take further remedial action, including revealing the information necessary to remedy this violation to other appropriate government officials not in the prosecutor's office.

PART II.
ORGANIZATION OF THE PROSECUTION FUNCTION

Standard 3-2.1 Prosecution Authority to be Vested in a Public Official

The prosecution function should be performed by a public prosecutor who is a lawyer subject to the standards of professional conduct and discipline.

Standard 3-2.2 Interrelationship of Prosecution Offices Within a State

(a) Local authority and responsibility for prosecution is properly vested in a district, county, or city attorney. Wherever possible, a unit of prosecution should be designed on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution.

(b) In some states, conditions such as geographical area and population may make it appropriate to create a statewide system of prosecution in which the state attorney general is the chief prosecutor and the local prosecutors are deputies.

(c) In all states, there should be coordination of the prosecution policies of local prosecution offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the state. A state association of prosecutors should be established in each state.

(d) To the extent needed, a central pool of supporting resources and personnel, including laboratories, investigators, accountants, special counsel, and other experts, should be maintained by the state government and should be available to assist all local prosecutors.

Standard 3- 2.3 Assuring High Standards of Professional Skill

(a) The function of public prosecution requires highly developed professional skills. This objective can best be achieved by promoting continuity of service and broad experience in all phases of the prosecution function.

(b) Wherever feasible, he offices of chief prosecutor and staff should be full-time occupations.

(c) Professional competence should be the basis for selection for prosecutorial office. Prosecutors should select their personnel without regard to partisan political influence.

(d) Special efforts should be made to recruit qualified women and members of minority groups for prosecutorial office.

(e) In order to achieve the objective of professionalism and to encourage competent lawyers to accept such offices, compensation for prosecutors and their staffs should be commensurate with the high responsibilities of the office and comparable to the compensation of their peers in the private sector.

Standard 3- 2.4 Special Assistants, Investigative Resources, Experts

(a) Funds should be provided to enable a prosecutor to appoint special assistants from among the trial bar experienced in criminal cases, as needed for the prosecution of a particular case or to assist generally.

(b) Funds should be provided to the prosecutor for the employment of a regular staff of professional investigative personnel and other necessary supporting personnel, under the prosecutor's direct control, to the extent warranted by the responsibilities and scope of the office; the prosecutor should also be provided with funds for the employment of qualified experts as needed for particular cases.

Standard 3- 2.5 Prosecutor's Handbook; Policy Guidelines and Procedures

(a) Each prosecutor's office should develop a statement of (i) general policies to guide the exercise of prosecutorial discretion and (ii) procedures of the office. The objectives of these policies as to discretion and procedures should be to achieve a fair, efficient, and effective enforcement of the criminal law.

(b) In the interest of continuity and clarity, such statement of policies and procedures should be maintained in an office handbook. This handbook should be available to the public, except for subject matters declared "confidential," when it is reasonably believed that public access to their contents would adversely affect the prosecution function.

Standard 3- 2.6 Training Programs

Training programs should be established within the prosecutor's office for new personnel and for continuing education of the staff. Continuing education programs for prosecutors should be substantially expanded and public funds should be provided to enable prosecutors to attend such programs.

Standard 3- 2.7 Relations With Police

(a) The prosecutor should provide legal advice to the police concerning police functions and duties in criminal matters.

(b) The prosecutor should cooperate with police in providing the services of the prosecutor's staff to aid in training police in the performance of their function in accordance with law.

Standard 3- 2.8 Relations With the Courts and Bar

(a) A prosecutor should not intentionally misrepresent matters of fact or law to the court.

(b) A prosecutor's duties necessarily involve frequent and regular official contacts with the judge or judges of the prosecutor's jurisdiction. In such contacts the prosecutor should carefully strive to preserve the appearance as well as the reality of the correct relationship which professional traditions, ethical codes, and applicable law require between advocates and judges.

(c) A prosecutor should not engage in unauthorized ex parte discussions with or submission of material to a judge relating to a particular case which is or may come before the judge.

(d) A prosecutor should not fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecutor's position and not disclosed by defense counsel.

(e) A prosecutor should strive to develop good working relationships with defense counsel in order to facilitate the resolution of ethical problems. In particular, a prosecutor should assure defense counsel that if counsel finds it necessary to deliver physical items which may be relevant to a pending case or investigation to the prosecutor the prosecutor will not offer the fact of such delivery by defense counsel as evidence before a jury for purposes of establishing defense counsel's client's culpability. However, nothing in this Standard shall prevent a prosecutor from offering evidence of the fact of such delivery in a subsequent proceeding for the purpose of proving a crime or fraud in the delivery of the evidence.

Standard 3- 2.9 Prompt Disposition of Criminal Charges

(a) A prosecutor should avoid unnecessary delay in the disposition of cases. A prosecutor should not fail to act with reasonable diligence and promptness in prosecuting an accused.

(b) A prosecutor should not intentionally use procedural devices for delay for which there is no legitimate basis.

(c) The prosecution function should be so organized and supported with staff and facilities as to enable it to dispose of all criminal charges promptly. The prosecutor should be punctual in attendance in court and in the submission of all motions, briefs, and other papers. The prosecutor should emphasize to all witnesses the importance of punctuality in attendance in court.

(d) A prosecutor should not intentionally misrepresent facts or otherwise mislead the court in order to obtain a continuance.

(e) A prosecutor, without attempting to get more funding for additional staff, should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the interests of justice in the speedy disposition of charges, or may lead to the breach of professional obligations.

Standard 3- 2.10 Supercession and Substitution of Prosecutor

(a) Procedures should be established by appropriate legislation to the end that the governor or other elected state official is empowered by law to suspend and supersede a local prosecutor upon making a public finding, after reasonable notice and hearing, that the prosecutor is incapable of fulfilling the duties of office.

(b) The governor or other elected official should be empowered by law to substitute special counsel in the place of the local prosecutor in a particular case, or category of cases, upon making a public finding that this is required for the protection of the public interest.

Standard 3- 2.11 Literary or Media Agreements

A prosecutor, prior to conclusion of all aspects of a matter, should not enter into any agreement or understanding by which the prosecutor acquires an interest in literary or media rights to a portrayal or account based in substantial part on information relating to that matter.

PART III.
INVESTIGATION FOR PROSECUTION DECISION

Standard 3-3.1 Investigative Function of Prosecutor

(a) A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

(b) A prosecutor should not invidiously discriminate against or in favor of any person on the basis of race, religion, sex, sexual preference, or ethnicity in exercising discretion to investigate or to prosecute. A prosecutor should not use other improper considerations in exercising such discretion.

(c) A prosecutor should not knowingly use illegal means to obtain evidence or to employ or instruct or encourage others to use such means.

(d) A prosecutor should not discourage or obstruct communication between prospective witnesses and defense counsel. A prosecutor should not advise any person or cause any person to be advised to decline to give to the defense information which such person has the right to give.

(e) A prosecutor should not secure the attendance of persons for interviews by use of any communication which has the appearance or color of a subpoena or similar judicial process unless the prosecutor is authorized by law to do so.

(f) A prosecutor should not promise not to prosecute for prospective criminal activity, except where such activity is part of an officially supervised investigative and enforcement program.

(g) Unless a prosecutor is prepared to forgo impeachment of a witness by the prosecutor's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present the impeaching testimony, a prosecutor should avoid interviewing a prospective witness except in the presence of a third person.

Standard 3-3.2 Relations With Victims and Prospective Witnesses

(a) A prosecutor should not compensate a witness, other than an expert, for giving testimony, but it is not improper to reimburse an ordinary witness for the reasonable expenses of attendance upon court, attendance for depositions pursuant to statute or court rule, or attendance for pretrial interviews. Payments to a witness may be for transportation and loss of income, provided there is no attempt to conceal the fact of reimbursement.

(b) A prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to counsel

whenever the law so requires. It is also proper for a prosecutor to so advise a witness whenever the prosecutor knows or has reason to believe that the witness may be the subject of a criminal prosecution. However, a prosecutor should not so advise a witness for the purpose of influencing the witness in favor of or against testifying.

(c) The prosecutor should readily provide victims and witnesses who request it information about the status of cases in which they are interested.

(d) the prosecutor should seek to insure that victims and witnesses who may need protections against intimidation are advised of and afforded protections where feasible.

(e) The prosecutor should insure that victims and witnesses are given notice as soon as practicable of scheduling changes which will affect the victims' or witnesses' required attendance at judicial proceedings.

(f) The prosecutor should not require victims and witnesses to attend judicial proceedings unless their testimony is essential to the prosecution or is required by law. When their attendance is required, the prosecutor should seek to reduce to a minimum the time they must spend at the proceedings.

(g) The prosecutor should seek to insure that victims of serious crimes or their representatives are given timely notice of: (i) judicial proceedings relating to the victims' case; (ii) disposition of the case, including plea bargains, trial and sentencing; and (iii) any decision or action in the case which results in the accused's provisional or final release from custody.

(h) Where practical, the prosecutor should seek to insure that victims of serious crimes or their representatives are given an opportunity to consult with and to provide information to the prosecutor prior

to the decision whether or not to prosecute, to pursue a disposition by plea, or to dismiss the charges.

Standard 3-3.3 Relations With Expert Witnesses

(a) A prosecutor who engages an expert for an opinion should respect the independence of the expert and should not seek to dictate the formation of the expert's opinion on the subject. To the extent necessary, he prosecutor should explain to the expert his or her role in the trial as an impartial expert called to aid the fact finders and the manner in which the examination of witnesses is conducted.

(b) A prosecutor should not pay an excessive fee for the purpose of influencing the expert's testimony or to fix the amount of the fee contingent upon the testimony the expert will give or the result in the case.

Standard 3-3.4 Decision to Charge

(a) The decision to institute criminal proceedings should be initially and primarily the responsibility of the prosecutor.

(b) Prosecutors should take reasonable care to ensure that investigators working at their direction or under their authority are adequately trained in the standards governing the issuance of arrest and search warrants and should inform investigators that they should seek the approval of a prosecutor in close or difficult cases.

(c) The prosecutor should establish standards and procedures for evaluating complaints to determine whether criminal proceedings should be instituted.

(d) Where the law permits a citizen to complain directly to a judicial officer or the grand jury, the citizen complainant should be required

to present the complaint for prior approval to the prosecutor, and the prosecutor's action or recommendation thereon should be communicated to the judicial officer or grand jury.

Standard 3-3.5 Relations with Grand Jury

(a) Where the prosecutor is authorized to act as legal advisor to the grand jury, the prosecutor may appropriately explain the law and express an opinion on the legal significance of the evidence but should give due deference to its status as an independent legal body.
(b) The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.
(c) The prosecutor's communications and presentations to the grand jury should be on the record.

Standard 3-3.6 Quality and Scope of Evidence Before Grand Jury

(a) A prosecutor should only make statements or arguments to the grand jury and only present evidence to the grand jury which the prosecutor believes is appropriate or authorized under law for presentation to the grand jury. In appropriate cases, the prosecutor may present witnesses to summarize admissible evidence available to the prosecutor which the prosecutor believes he or she will be able to present at trial. The prosecutor should also inform the grand jurors that they have the right to hear any available witnesses, including eyewitnesses.
(b) No prosecutor should knowingly fail to disclose to the grand jury evidence which tends to negate guilt or mitigate the offense.

(c) A prosecutor should recommend that the grand jury not indict if he or she believes the evidence presented does not warrant an indictment under governing law.

(d) If the prosecutor believes that a witness is a potential defendant, the prosecutor should not seek to compel the witness's testimony before the grand jury without informing the witness that he or she may be charged and that the witness should seek independent legal advice concerning his or her rights.

(e) The prosecutor should not compel the appearance of a witness before the grand jury whose activities are the subject of the inquiry if the witness states in advance that if called he or she will exercise the constitutional privilege not to testify, unless the prosecutor intends to judicially challenge the exercise of the privilege or to seek a grant of immunity according to the law.

(f) A prosecutor in presenting a case to a grand jury should not intentionally interfere with the independence of the grand jury, preempt a function of the grand jury, or abuse the processes of the grand jury.

(g) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury in order to obtain tangible, documentary or testimonial evidence to assist the prosecutor in preparation for trial of a defendant who has already been charged by indictment or information.

(h) Unless the law of the jurisdiction so permits, a prosecutor should not use the grand jury for the purpose of aiding or assisting in any administrative inquiry.

Standard 3-3.7 Quality and Scope of Evidence for Information

Where the prosecutor is empowered to charge by information, the prosecutor's decisions should be governed by the principles embodied in Standards 3-3.6 and 3-3.9, where applicable.

Standard 3-3.8 Discretion as to Noncriminal Disposition

(a) The prosecutor should consider in appropriate cases the availability of noncriminal disposition, formal or informal, in deciding whether to press criminal charges which would otherwise be supported by probable cause; especially in the case of a first offender, the nature of the offense may warrant noncriminal disposition.
(b) Prosecutors should be familiar with the resources of social agencies which can assist in the evaluation of cases for diversion from the criminal process.

Standard 3-3.9 Discretion in the Charging Decision

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.
(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative or the factors which the

prosecutor may properly consider in exercising his or her discretion are:

(i) the prosecutor's reasonable doubt that the accused is in fact guilty;

(ii) the extent of the harm caused by the offense;

(iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;

(iv) possible improper motives of a complainant;

(v) reluctance of the victim to testify;

(vi) cooperation of the accused in the apprehension or conviction of others; and

(vii) availability and likelihood of prosecution by another jurisdiction.

(c) A prosecutor should not be compelled by his or her supervisor to prosecute a case in which he or she has a reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions.

(e) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(f) The prosecutor should not bring or seek charges greater in number of degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense.

(g) The prosecutor should not condition a dismissal of charges, nolle prosequi, or similar action on the accused's relinquishment of the right to seek civil redress unless the accused has agreed to the

action knowingly and intelligently, freely and voluntarily, and where such waiver is approved by the court.

Standard 3-3.10 Role in First Appearance and Preliminary Hearing

(a) A prosecutor who is present at the first appearance (however denominated) of the accused before a judicial officer should not communicate with the accused unless a waiver of counsel has been entered, except for the purpose of aiding in obtaining counsel or in arranging for the pretrial release of the accused. A prosecutor should not fail to make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

(b) The prosecutor should cooperate in good faith in arrangements for release under the prevailing system for pretrial release.

(c) The prosecutor should not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing.

(d) The prosecutor should not seek a continuance solely for the purpose of mooting the preliminary hearing by securing an indictment.

(e) Except for good cause, the prosecutor should not seek delay in the preliminary hearing after an arrest has been made if the accused is in custody.

(f) The prosecutor should ordinarily be present at a preliminary hearing where such hearing is required by law.

Standard 3-3.11 Disclosure of Evidence by the Prosecutor

(a) A prosecutor should not intentionally fail to make timely disclosure to the defense, at the earliest feasible opportunity, of the existence of all evidence or information which tends to negate the guilt of the accused or mitigate the offense charged or which would tend to reduce the punishment of the accused.

(b) A prosecutor should not fail to make a reasonably diligent effort to comply with a legally proper discovery request.

(c) A prosecutor should not intentionally avoid pursuit of evidence because he or she believes it will damage the prosecution's case or aid the accused.

PART IV.
PLEA DISCUSSIONS

Standard 3-4.1 Availability for Plea Discussions

(a) The prosecutor should have and make known a general policy or willingness to consult with defense counsel concerning disposition of charges by plea.

(b) A prosecutor should not engage in plea discussions directly with an accused who is represented by defense counsel, except with defense counsel's approval. Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant, although, where feasible, a record of such discussions should be made and preserved.

(c) A prosecutor should not knowingly make false statements or representations as to fact or law in the course of plea discussions with defense counsel or the accused.

Standard 3-4.2 Fulfillment of Plea Discussions

(a) A prosecutor should not make any promise or commitment assuring a defendant or defense counsel that a court will impose a specific sentence or a suspension of sentence; a prosecutor may properly advise the defense what position will be taken concerning disposition.
(b) A prosecutor should not imply a greater power to influence the disposition of a case than is actually possessed.
(c) A prosecutor should not fail to comply with a plea agreement, unless a defendant fails to comply with a plea agreement or other extenuating circumstances are present.

Standard 3-4.3 Record of Reasons for Nolle Prosequi Disposition

Whenever felony criminal charges are dismissed by way of nolle prosequi (or its equivalent), the prosecutor should make a record of the reasons for the action.

PART V.
THE TRIAL

Standard 3-5.1 Calendar Control

Control over the trial calendar should be vested in the court. The prosecuting attorney should advise the court of facts relevant in determining the order of cases on the court's calendar.

Standard 3-5.2 Courtroom Professionalism

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the trial courtroom by strict adherence to codes of professionalism and by manifesting a professional attitude toward the judge, opposing counsel, witnesses, defendants, jurors, and others in the courtroom.

(b) When court is in session, the prosecutor should address the court, not opposing counsel, on all matters relating to the case.

(c) A prosecutor should comply promptly with all orders and directives of the court, but the prosecutor has a duty to have the record reflect adverse rulings or judicial conduct which the prosecutor considers prejudicial. The prosecutor has a right to make respectful requests for reconsideration of adverse rulings.

(d) Prosecutors should cooperate with courts and the organized bar in developing codes of professionalism for each jurisdiction.

Standard 3-5.3 Selection of Jurors

(a) The prosecutor should prepare himself or herself prior to trial to discharge effectively the prosecution function in the selection of the jury and the exercise of challenges for cause and peremptory challenges.

(b) In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of the prosecutor should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

(c) The opportunity to question jurors personally should be used solely to obtain information for the intelligent exercise of challenges. A prosecutor should not intentionally use the voir dire to present factual matter which the prosecutor knows will not be admissible at trial or to argue the prosecution's case to the jury.

Standard 3-5.4 Relations With Jury

(a) A prosecutor should not intentionally communicate privately with persons summoned for jury duty or impaneled as jurors prior to or during trial. The prosecutor should avoid the reality or appearance of any such communications.

(b) The prosecutor should treat jurors with deference and respect, avoiding the reality or appearance of currying favor by a show of undue solicitude for their comfort or convenience.

(c) After discharge of the jury from further consideration of a case, a prosecutor should not intentionally make comments to or ask questions of a juror for the purpose of harassing or embarrassing the juror in any way which will tend to influence judgment in future jury service. If the prosecutor believes that the verdict may be subject to legal challenge, he or she may properly, if no statute or rule prohibits such course, communicate with jurors to determine whether such challenge may be available.

Standard 3-5.5 Opening Statement

The prosecutor's opening statement should be confined to a statement of the issues in the case and the evidence the prosecutor intends to offer which the prosecutor believes in good faith will be available and admissible. A prosecutor should not allude to any evidence unless there is a good faith

and reasonable basis for believing that such evidence will be tendered and admitted in evidence.

Standard 3-5.6 Presentation of Evidence

(a) A prosecutor should not knowingly offer false evidence, whether by documents, tangible evidence, or the testimony of witnesses, or fail to seek withdrawal thereof upon discovery of its falsity.

(b) A prosecutor should not knowingly and for the purpose of bringing inadmissible matter to the attention of the judge or jury offer inadmissible evidence, ask legally objectionable questions, or make other impermissible comments or arguments in the presence of the judge or jury.

(c) A prosecutor should not permit any tangible evidence to be displayed in the view of the judge or jury which would tend to prejudice fair consideration by the judge or jury until such time as a good faith tender of such evidence is made.

(d) A prosecutor should not tender tangible evidence in the view of the judge or jury if it would tend to prejudice fair consideration by the judge or jury unless there is a reasonable basis for its admission in evidence. When here is any substantial doubt about the admissibility of such evidence, it should be tendered by an offer of proof and a ruling obtained.

Standard 3-5.7 Examination of Witnesses

(a) The interrogation of all witnesses should be conducted fairly, objectively, and with due regard for the dignity and legitimate privacy of the witness, and without seeking to intimidate or humiliate the witness unnecessarily.

(b) The prosecutor's belief that the witness is telling the truth does not preclude cross-examination, but may affect the method and scope of cross-examination. A prosecutor should not use the power of cross-examination to discredit or undermine a witness if the prosecutor knows the witness is testifying truthfully.
(c) A prosecutor should not call a witness in the presence of the jury who the prosecutor knows will claim a valid privilege not to testify.
(d) A prosecutor should not ask a question which implies the existence of a factual predicate for which a good faith belief is lacking.

Standard 3-5.8 Argument to the Jury

(a) In closing argument to the jury, the prosecutor may argue all reasonable inferences from evidence in the record. The prosecutor should not intentionally misstate the evidence or mislead the jury as to the inferences it may draw.
(b) The prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant.
(c) The prosecutor should not make arguments calculated to appeal to the prejudices of the jury.
(d) The prosecutor should refrain from argument which would divert the jury from its duty to decide the case on the evidence.

Standard 3-5.9 Facts Outside the Record

The prosecutor should not intentionally refer to or argue on the basis of facts outside the record whether at trial or on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice.

Standard 3-5.10 Comments by Prosecutor After Verdict

The prosecutor should not make public comments critical of a verdict, whether rendered by judge or jury.

PART VI.
SENTENCING

Standard 3-6.1 Role in Sentencing

(a) The prosecutor should not make the severity of sentences the index of his or her effectiveness. To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities.

(b) Where sentence is fixed by the court without jury participation, the prosecutor should be afforded the opportunity to address the court at sentencing and to offer a sentencing recommendation.

(c) Where sentence is fixed by the jury, the prosecutor should present evidence on the issue within the limits permitted in the jurisdiction, but the prosecutor should avoid introducing evidence bearing on sentence which will prejudice the jury's determination of the issue of guilt.

Standard 3-6.2 Information Relevant to Sentencing

(a) The prosecutor should assist the court in basing its sentence on complete and accurate information for use in the presentence report. The prosecutor should disclose to the court any information in the prosecutor's files relevant to the sentence. If incompleteness

or inaccurateness in the presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and to defense counsel.

(b) The prosecutor should disclose to the defense and to the court at or prior to the sentencing proceeding all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

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Return to the Table of Contents
Return to listing of Criminal Justice Standards

（四）美國法官遭撤職或停職典型案例選錄

1、法官生錯氣

法官開庭時動怒，若是夾雜個人情緒，有時會影響到公平正義，甚至導致法官被撤職，這是發生在美國紐約州的實際案例，值得我國參考。

2005年3月11日，紐約州尼加拉瀑布市（Niagara Falls City）家暴事件法庭Restaino法官開庭時，多名被告與律師一起在法庭裡面候審，被點名者逐一上前接受審問，由法官裁決交保、羈押或其他處置。當時在法庭裡，還有多位檢察官、觀護人、庭務員、法警與旁聽民眾。當天庭期滿檔，約有七十名被告待審。

開庭後約一小時，已有30多名被告訊問完畢，其中有11名經諭令「飭回候傳」（即不用繳保釋金）。此時法庭後方突然有手機響起，坐在庭上的Restaino法官抬起頭來，不悅地說「手機的所有人馬上交出機子來，否則所有在場者均須到牢裡待上一個禮拜」，但沒人承認。經過再次警告，並休庭五分鐘後，仍然無人交出手機。

Restaino這時動怒了，他開口問面前應訊的一名被告手機是何人的，該被告答稱不知道，Restaino即撤銷先前「飭回」的裁定，而改為交保一千五百美元。

接下來應訊的34名被告都逐一被Restaino質問手機的所有人為誰，但他們都答稱不知道，Restaino即連續將所有原已諭令「飭回」者均改為「交保」，原已「交保」者則加重保釋金額。其間有數名被告以「家有老母」、「探視小

孩」、「與律師有約」、「剛找到新工作」等多種理由向Restaino求情，但他均不為所動。結果有46名被告因交不出保釋金，統統被銬上手銬，送到郡立看守所關進牢裡。

一直到隔天下午，Restaino經書記官通知已有媒體在探聽此事後，才趕緊下令釋放被關在看守所的被告們。

一年之後，紐約州「司法行為委員會」（the State Commission on Judicial Conduct）以九比一的投票數做出決定，認為Restaino因違反法官守則，恣意剝奪被告之人身自由，應予「撤職」（remove from the office）。Restaino不服，依法向紐約州最高法院起訴請求撤銷委員會之決議，但遭該法院於2008年6月5日判決駁回而維持撤職之決議。

Restaino法官的抗辯著重在「精神狀態」，強調其因婚姻不美滿壓力過大，導致一時衝動而犯錯，並有二位心理學專家證人為其出庭做證。但紐約州最高法院在判決文中指出，Restaino法官所犯錯誤並非單一，其原本有46次的機會檢討自己的做法是否妥當（即手機響後訊問了46名的被告），但其卻仍連續將「交保」目的從「保證被告日後能夠出庭」扭曲成「報復的工具」，此情形「確已非比尋常」（truly egregious）。

紐約州最高法院進一步指出：法官懲戒程序的目的並不是在懲罰，而是在防止不適任的人坐上法官的席位。所以認為本案光是「公開譴責」（public censure）尚不足夠，而必須採取「撤職」處分。

（作者陳瑞仁檢察官）

2、法官講錯話

法官生錯氣會被撤職，若講錯話，有時也同樣嚴重，美國紐約州Onondaga郡法官Mulroy的丟官記就是一例。

Mulroy法官於一九九六年八月承審一件共同侵入住宅強劫殺人案，被告一共有四名，被害人是一名六十七歲的非洲裔婦女。在開庭前的一個晚上，Mulroy法官在某個鄉村俱樂部打完高爾夫球吃晚餐時，遇到該案的蒞庭檢察官，即向他表示，該案件中有二名被告他不想審判，檢方最好答應認罪協商，而且檢方不用擔心外界反應，因為被害人只不過是一名「黑鬼母狗」（some old nigger bitch）。

到了開庭當天，檢方礙於形勢，即同意其中二名被告有期徒刑五年至十二年的認罪協商。Mulroy法官當庭又說檢方雖然應將被害人列入考量，但該名被害人「並沒什麼了不起」（no great shakes）。

Mulroy法官的種族歧視語言並不止這一次，同年七月間，其競選連任法官時，在慈善晚宴碰到一位競選連任的檢察長，該檢察長向Mulroy法官抱怨說「有些人疲於競選，但有些人卻是坐在那邊等人用銀盤奉上席位給他坐」。Mulroy法官明知該檢察長是義大利裔後代，卻仍挖苦說「對呀，你也知道你們義大利人與黑手黨掛勾多深」（You know how you Italian types are with your Mafia connections.）

除了種族歧視語言外，Mulroy法官也在開庭時使用極其粗鄙的語言。同年二月間，他在審理一件強姦案時，因

不耐陪審團在密室評議過久，急著要下班回家，當庭指責檢察官小題大作，不悅地說「我想要回Syracuse的家，因為現在是星期四晚上，是男人外出的晚上」、「你為何不給這傢伙一個X他媽的輕罪，好讓我脫離這X他媽的Utica（審判地點之地名）黑洞」（Why don't you give this guy a fucking misdemeanor so I can get out of this fucking black hole of Utica.）。但檢察官堅不讓步，不久之後陪審團做出有罪裁決。

事隔二年後，紐約州「司法行為委員會」接受告發進行調查，並在一九九九年決定將Mulroy法官撤職（remove from the office）。理由是Mulroy法官所使用的種族歧視語言令人懷疑其能否公平審判案件，其所顯現的偏見與「低敏感度」（insensitivity）不容在法官身上發生。

此外，該委員會並認為Mulroy法官二度逼迫檢察官同意認罪協商，完全是基於「減輕案件負荷」（to lighten the caseload）與想要快點回家的「個人便利」（personal convenience）考量，所以應處以「撤職」的最嚴厲懲戒。

Mulroy法官不服委員會之決定，上訴至紐約州最高法院，辯稱其之所以有不當發言，或是為了要安撫檢察官的不安，或是被對方挑撥而起。但該法院於二〇〇〇年四月六日駁回上訴，並認定Mulroy法官已經違反紐約州法官守則（Code of Judicial Conduct）第一條「法官應維護司法之獨立與完整」、第二條「法官應避免不當與看似不當的法官作為」以及第三條之「法官應公平謹慎行使職權」的規定而應撤職。

（作者陳瑞仁檢察官）

3、法官不結案

法官的淘汰，是司法改革的重心之一。對於「不清不明」或「明而不清」之法官的淘汰，並非難事。然對於「清而不明」的法官的淘汰，則是最難決定的司改手段。

換言之，一位法官操守良好，但因為無能（或偷懶）而長期積案未結，我們可否將其淘汰？有二件美國案例可供參考。

第一個案例是紐約州Westchester 郡White Plains市的Washington法官，她是一位「兼職法官」，負責在每隔一週的星期三審理小額的民事案件，每年的案件量只不過七十五至八十件。但在就任四年後，Washington法官即累積了六十七件的遲延案件（辯論終結後遲未宣判），其中有二十件遲延半年至一年；十九件遲延一年至一年半；十二件遲延一年半至二年；九件遲延二年至二年半。

這期間Washington法官不但故意短報未結案的件數，並且連續七次忽視「行政法官」（Administrative Judge，負責行政與管考的資深法官）的書面與口頭催辦。此外，法院為幫助其結案，多派了一位助理給她，但她卻未交辦任何事務給該助理。

紐約州的「司法行為委員會」在聽審後，援引紐約州的Greenfield案判例，於2002年10月決議將Washington法官撤職。該判例之要旨是：遲延案件並不足以將一位法官撤職，除非其在遲延後，仍抗拒行政督導（defy administrative directives），或是假報遲延資料。

Washington法官不服，上訴至紐約州最高法院，但被駁回。

另一個案例是加州Riverside郡上訴法院的全職法官Spitzer，他同樣是未結案過多（致其審判長不得不將案件打散給別的法官）。但他的麻煩顯然比紐約州Washington法官多，原因在於加州對於法官的結案速度有特別規定。

加州憲法第6條第19項明文規定法官應在辯論終結後90天內宣判（90 days after it has been submitted for decision），若未遵行，在宣判前不得支領薪資。因此，法官在每個月底都必須填具一份「領薪切結書」（salary affidavit），表明手上沒有遲延案件。所以Spitzer法官的不當行為，不僅是遲延案件，另涉及在切結書做「不實陳述」。

Spitzer法官另外被質疑的一件事是，其所為書面裁定的日期，與公告日期之間隔，有多件長達六個月至十三個月，疑似倒填日期（backdating）。加上Spitzer法官曾經多次私下（未知會檢方）促請被害人家屬說服檢察官接受認罪協商，加州「司法行為委員會」（The Commission on Judicial Performance）遂於2007年10十月決議將其撤職。Spitzer法官不服上訴，遭加州最高法院駁回。

由上可知，美國紐約州與加州均有指定資深法官監督承審法官的案件進度，而且會採取「催告」、「打散積案」、「協助擬訂清理計畫」等行政補救措施，若仍無法改善，法官即有可能被撤職。加州甚至將法官的結案速度與薪資支領結合，更是獨具創意。凡此機制，至今並未被宣告為「妨害司法獨立」。　　（作者陳瑞仁檢察官）

4、法官亂發飆

法官在法庭上的言行，應能彰顯司法的尊崇，避免顯露個人的好惡、情緒，而有害於司法公正。美國的司法實務上，亦曾發生法官於開庭時，對律師粗魯無禮，經密西根州最高法院認定構成法官不當行為，而處以無薪停職3天的懲罰，值得作為我國殷鑑。

法官G. Michael Hocking承審一件未成年子女監護權事件（McPherson v. McPherson, Eaton Circuit Court, File No. 82-409-DM），律師Elaine Sharp於1991年12月5日代表未成年人之父親出庭，對法院先前所作終止共同監護的裁定提出異議，Hocking法官以嚴厲的口吻且很快地告知Sharp律師，其認為這次的動議跟上次所提出的是一樣的，要律師提出此動議為新動議的理由，而當Sharp律師試圖說明法律依據時，Hocking法官又很快地打斷她，裁定這個動議只是要求重新考慮的動議，並且以草率提出動議為由，裁定訴訟費用及律師費作為對律師及該案被告的懲罰。在Sharp律師對其表達不滿時，Hocking法官又以藐視法庭罪處以罰款並將律師逐出法庭。（關於藐視法庭部分，嗣經認定不構成濫用權力情事）

茲節錄Hocking法官與Sharp律師的部分對話內容如下：

法官：「我看不出來本件有何實益，我要你告訴我何以本件改定共同監護的動議不是為了重新處理原已作成的裁定……」

律師：「好，告訴我證據何在？……你可曾考慮親子

間的愛及情感上的連結？」

法官：「夠了，你的動議被否決了，那只不過是個要求重新考慮的動議，本院認為提出這個動議是輕率且欠缺訴之利益的，因此裁定訴訟費用及律師費作為對律師及被告的懲罰。……」

律師：「請鈞院明示法律依據。」

法官：「好的， 依據是M C L 600.2591。」

律師：「我是指輕率動議的法律依據何在，而非指訴訟費用的法律依據。」

法官：「如果你不喜歡我的裁決，女士，上訴法院等待著你。」

律師：「好，可以給我一個否決監護的命令嗎？」

法官：「我現在唯一要簽署的命令就是關於罰款、訴訟費用的命令，以及……」

律師：「你……」

法官：「不要打斷我。」

律師：「不要打斷我。」

法官：「這樣好了，這是第一次警告。」

律師：「你真要否決動議嗎？」

法官：「第一次警告。三次你就構成藐視法庭。」

律師：「很好，鈞院否決了是嗎？」

法官：「很好，第二次警告。」

律師：「鈞院否決了？」

法官：「是的，本院否決了。」

律師：「鈞院否決…」

法官：「本院否決你的動議。」

律師：「關於改定共同監護的動議？」
法官：「是的，女士。」
律師：「鈞院否決了？」
法官：「本院否決了。」
律師：「沒有確實可信的證據？」
法官：「女士，我不知道你是從那個星球來的。」
律師：「我也不知道你是從那個——來的。」
法官：「你藐視法庭，罰款是250元。」
律師：「你深諳此道。」
法官：「而且你將被拘禁在郡立監獄5天……」
律師：「很好。」
法官：「……直到你給付罰款為止。」
律師：「很好，那麼現在給我報社記者及律師。」
法官：「你已經有了，女士。」
律師：「你是在另一個星球上的人，你不正常，你完全……」
法官：「帶他出去。」
律師：「我要求法庭紀錄繼續下去，讓紀錄顯現律師在表達抗議、顯現藐視法庭是毫無根據的、顯現律師要求法院立即給予辯護律師及報社。」
法官：「你藐視法庭，罰款是250元。」
律師：「你深諳此道。」
法官：「而且你將被拘禁在郡立監獄5天……」
律師：「很好。」
法官：「……直到你給付罰款為止。」
律師：「很好，那麼現在給我報社記者及律師。」

法官：「你已經有了，女士。」

律師：「你是在另一個星球上的人，你不正常，你完全……」

法官：「帶他出去。」

律師：「我要求法庭紀錄繼續下去，讓紀錄顯現律師在表達抗議、顯現藐視法庭是毫無根據的、顯現律師要求法院立即給予辯護律師及報社。」

法官任期委員會（Judicial Tenure Commission）於1994年5月12日對Hocking法官正式作出指控（於同年10月6日修正指控內容），認為Hocking法官前述在法庭中辱罵的行為，構成法官不當行為。密西根州最高法院於1994年6月14日指派Joseph B. Sullivan為主席，於同年10月、11月間召開聽證會，旋即於同年12月28日公布報告，結論亦認為Hocking法官前開行為構成法官不當行為。

兩造均對前開報告聲明異議，因而於1995年3月20日在法官任期委員會進行言詞辯論，委員會於同年4月12日，採納上述報告的主要意見，認為Hocking法官前開對律師粗魯無禮之言行，構成法官不當行為，建議對Hocking法官作出無薪停職之懲處。

Hocking法官嗣於1995年5月24日，向密西根州最高法院起訴請求駁回或減輕法官任期委員會所為之前開懲處建議，主張委員會認定其行為不當係屬錯誤。密西根州最高法院審理認為，Hocking法官前開對律師ElaineSharp粗魯無禮之行為，構成法官不當行為，因而處以無薪停職3天的懲罰。

密西根州最高法院認為，Hocking法官的言行顯然欠缺思考，以質疑Sharp律師的方式挑起彼此針鋒相對的應答，並用尖酸的語言、辱罵的語調，對Sharp律師作出人身攻擊，明顯有害於司法正義的實現，而違反了法官行為守則。雖然Sharp律師在法官制止後仍不斷發言，但法官得以運用藐視法庭的權力，控制脫序行為，自應避免顯露出過度的不滿或生氣的情緒，Hocking法官上開言行全然喪失了自制，已構成法官不當行為。

由此可知，司法官代表國家行使司法權，一言一行，必須展現謹慎、莊重、沈穩、持平的態度，以符合人民對司法崇高的印象及對司法公正的期待，避免受主觀好惡、個人情緒影響，產生率性妄為、言行失當之情事，以致侵蝕了人民對司法的信賴，上述的案例值得吾人引以為鑒。

（作者蔡名堯主任檢察官）

3 加拿大法官倫理守則

三、加拿大法官倫理守則

第1條：目的

主旨：本文獻之目的是提供聯邦法官的倫理指導。

原則 1. 這些主旨、原則與評述說明所有法官應努力實踐之最高的規範。這些主旨、原則與評述是因應司法獨立及法律之要求，與各種相關情況之所需，基於理性考慮應被適用之準則。但這些已盡力追求完善的主旨、原則與評述，並不表示因適用後所生合理的歧異，或與其不符的就不被容許。

2. 這些主旨、原則與評述性質上屬於建議性的。其目的是幫助法官如何面對道德與倫理上的難題；且有助於一般大眾更加了解司法的角色。它不是也不應被視為司法所禁止行為之判斷標準或界限；亦非用來判定司法不當行為之標準。

3. 獨立的司法制度是每一個加拿大人民的權利。一個法官應該且被期待能自主地依照法律及證據，公正且不偏不倚地判斷，不受任何外在的壓力或影響，且無需畏懼來自任何人的干預。無論在任何情況下，這些主旨、原則與評述不能亦無意去妨礙司法獨立，否則就違反其所想要追尋的目標－也就是人民可經由公平且獨立的法官來實現平等與公正的司法。第2條所載之司法獨立，法官有義務去維持及捍衛；但司法獨立不是司法機關的特權，而是指人民關於其憲法上所保障之權利發生爭議時，可獲得公正法官之審理及裁判。

第2條：司法獨立

主旨：獨立之司法制度是公正的司法所不可或缺的。所以，就個人及機關方面，法官均應該堅守且以身作則來實踐司法獨立。

原則 1. 法官應獨立地履行其司法職責，而免於外來的干涉。

2. 任何企圖透過不符合正當訴訟程序的方法來影響裁判，法官都應堅定地加以拒絕。

3. 法官應促進與支持能維護及提昇司法機關與運作獨立的措施與防衛機制。

4. 公眾的信心是司法獨立的基石，法官應表現且提昇高標準之司法行為，來強化公眾對司法的信心。

第3條：正直

主旨：法官應努力表現出正直的行為，以維持及強化人民對司法的信心。

原則 1. 法官應努力確保其行為在一般理性、公正及有知識的人之間不致引起爭議。

2. 法官除了自己保持高標準的行為外，也應鼓勵及支持他的同僚能保持同樣的高標準行為。

第4條：勤勉

主旨：法官應勤勉地履行其司法職責。

原則 1. 法官應奉獻他們的專業活動在廣義的司法職務上，不僅指在法庭指揮訴訟及裁判，也包括與司法運作有重要關係的工作。

2. 法官應採取合理的方法來維持及提昇司法職務所

需要的知識、技能及人格特質。

3. 法官應努力履行所有的司法職責，包括迅速地終結案件。
4. 法官不應從事與誠勉地履行司法職務不相容之事，也不應容忍其同僚有此行為。

第5條：平等

主旨：法官處理業務與指揮訴訟程序時，都應盡力依法維持平等。

原則 1. 法官執行職務時，應平等對待所有相關人員（例如當事人、證人、法院同仁與司法同僚）。

2. 法官應努力去體察與理解不同背景者之差異性，例如性別、民族、宗教信仰、文化、種族背景、性取向或身心障礙。
3. 法官應避免參加其明知目前仍採行任何形式不法歧視之組織。
4. 法官在指揮訴訟過程中，應避免且不容許法院職員、律師或其他服從法官命令之人，有明顯不適當，而有性別、種族或其他法律所禁止之歧視理由的言行。

第6條：公正

主旨：法官裁判之過程與結果必需公正並顯得公正。

原則 1. 一般規定

(1) 不論在法庭上或法庭外，法官之行為應盡量維持且提昇人民對法官公正及法院公正之信賴。
(2) 法官應盡可能合理性地從事私人行為及商業行為，並避免構成個案迴避之原因。

(3) 所謂「顯得公正」是指從一個理性、公正及有知識者的觀點所為的評斷。

2. 司法舉止

法官在堅定地指揮訴訟程序及確保訴訟迅速時，對法庭中的每一人都應保持適當的禮貌。

3. 民事與慈善行為

遵照下列的考量，法官可自由地參與民事、慈善與宗教活動：

(1) 法官應避免參加會造成不利於公正形象或妨害司法職務的活動或組織。

(2) 法官不應對人勸募基金（除了向司法同仁或為了司法目的外），或把司法機關的名義提供給募款單位使用。

(3) 法官應避免涉入容易引起訴訟之事件或組織。

(4) 法官不應提供法律意見或投資意見。

4. 政治活動

(1) 基於一個理性、公正及有知識者之判斷，如日後對提出於法院的訴訟有造成不信任之可能時，法官不應以會員身分從事此類團體的活動，或參與此類公開的討論。

(2) 法官被任命後應停止所有的政黨政治活動；亦不應從事會被一個理性、公正及有知識者會認為是參與政治事務的活動。

(3) 法官不得有下列行為：

① 成為政黨及政治募款活動的成員。

② 參加政治性集會與政治募款活動。

③ 對政治團體或競選活動捐贈。

④ 公開地參與具爭議性的政治討論，但如直接與法院的運作、司法獨立或司法運作的基本原則有關者不在此限。

⑤ 連署影響政治決策的請願書。

(4) 雖然法官的家族成員有權利積極地參與政治，但法官應謹記：即使這是一種誤解，但其最近家族成員的政治活動，會造成大眾對司法公正產生負面的認知。任何案件中，如一般理性的人會產生此種認知時，法官應該迴避。

5. 利益衝突

(1) 任何案件中，法官如深信其有偏頗之虞時應自行迴避。

(2) 任何案件中，依一個理性、公正及有知識者之判斷，如認法官本人（或其最近親屬，或親密友伴）之利益與其執行職務之間有合理懷疑會造成衝突時，法官應自行迴避。

(3) 以下情形迴避是不適當的：

① 造成利益衝突之可能性是薄弱的或沒有充分的迴避理由。

② 沒有其他適當的法院可審理案件，或情況緊急時，不執行職務會造成不符合正義。

摘譯自加拿大法官協會發行法官倫理守則一書

ETHICAL PRINCIPLES FOR JUDGES

Catalogue Number JU11-4/2004E-PDF
ISBN 0-662-38118-1

Available from:
Canadian Judicial Council
Ottawa, Ontario
K1A 0W8
(613) 998-5182
(613) 998-8889 (facsimile)
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1. PURPOSE

Statement | *The purpose of this document is to provide ethical guidance for federally appointed judges.*

Principles:

1. The Statements, Principles and Commentaries describe the very high standards toward which all judges strive. They are principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of judicial independence and the law. Setting out the very best in these Statements, Principles and Commentaries does not preclude reasonable disagreements about their application or imply that departures from them warrant disapproval.

2. The Statements, Principles and Commentaries are advisory in nature. Their goals are to assist judges with the difficult ethical and professional issues which confront them and to assist members of the public to better understand the judicial role. They are not and shall not be used as a code or a list of prohibited behaviours. They do not set out standards defining judicial misconduct.

3. An independent judiciary is the right of every Canadian. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in these Statements, Principles and Commentaries can, or is intended to limit or restrict judicial independence in any manner. To do so would be to deny the very thing this document seeks to further: the rights of everyone to equal and impartial justice administered by fair and independent judges. As indicated in the chapter on Judicial Independence, judges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial judges.

Commentary:

1. These Statements, Principles and Commentaries are the latest in a series of Canadian efforts to provide guidance to judges on ethical and professional questions and to better inform the public about the high ideals which judges embrace and toward which they strive. They build upon the earlier work of the Hon. J.O. Wilson in *A Book for Judges* published in 1980, the Rt. Hon. Gerald Fauteux in *Le livre du magistrat* also published in 1980, the Canadian Judicial Council's *Commentaries on Judicial Conduct* published in 1991 and Professor Beverley Smith's text, *Professional Conduct for Lawyers and Judges* (1998). While drawing heavily on these invaluable resources, the present publication is by far the most comprehensive treatment of the subject to date in Canada. But it cannot provide exhaustive coverage of the myriad issues that arise in practice. The sources just mentioned, as well as those referred to in the next Commentary, will continue to be of assistance to Canadian judges.

2. As the references throughout the text indicate, a wide variety of sources have been consulted in the process of preparing this document. These include not only Canadian sources but also the Code of Judicial Conduct applying to the United States Federal judiciary, the American Bar Association's *Model Code of Judicial Conduct* (1990) as well as scholarly writing and rulings concerning judicial conduct in Canada, the United Kingdom, Australia and the United States. Of particular note are J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997), J. Shaman et al, *Judicial Conduct and Ethics* (2d, 1995) and S. Shetreet, *Judges on Trial* (1976). While all of these sources are helpful, this document is uniquely the work of Canadian judges. The process which resulted in these Statements, Principles and Commentaries was carried forward by a Working Committee representative of both the Canadian Judicial Council and the Canadian Judges Conference. An extensive process of consultation within the judiciary and beyond ensured that these Statements, Principles and Commentaries have been the subject of painstaking examination and vigorous debate. The intention is that Canadian judges will accept these Statements, Principles and Commentaries as reflective of their high ethical aspirations and that they will find them worthy of respect and deserving of careful consideration when facing any of the issues addressed in them.

3. A document of this nature can never be viewed as the "final word" on such an important and complex subject. Publication of these Statements, Principles and Commentaries coincides with the establishment of an Advisory Committee of Judges to which specific questions may be submitted by judges and which will respond with advisory opinions. This process will contribute to ongoing review and elaboration of the subjects dealt with in the Principles as well as introduce new issues that they do not address. More importantly, the Advisory Committee will ensure that help is readily available to judges looking for guidance.

2. JUDICIAL INDEPENDENCE

Statement: *An independent judiciary is indispensable to impartial justice under law. Judges should, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects.*

Principles:

1. Judges must exercise their judicial functions independently and free of extraneous influence.

2. Judges must firmly reject any attempt to influence their decisions in any matter before the Court outside the proper process of the Court.

3. Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary.

4. Judges should exhibit and promote high standards of judicial conduct so as to reinforce public confidence which is the cornerstone of judicial independence.

Commentary:

1. Judicial independence is not the private right of judges but the foundation of judicial impartiality and a constitutional right of all Canadians. Independence of the judiciary refers to the necessary individual and collective or institutional independence required for impartial decisions and decision making.[1] Judicial independence thus characterizes both a state of mind and a set of institutional and operational arrangements. The former is concerned with the judge's impartiality in fact; the latter with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence and impartiality. The Statement and Principles deal with judges' ethical obligations as regards their individual and collective independence. They do not deal with the many legal issues relating to judicial independence.

2. In *Valente v. The Queen*, LeDain, J. noted that "...judicial independence involves both individual and institutional relationships: the individual independence of a judge, as reflected in such matters as security of tenure and the institutional independence of the court or tribunal over which he or she presides, as reflected in its institutional or administrative relationships to the executive and legislative branches of government."[2] He concluded that "...judicial independence is a status or relationship resting on objective conditions or guarantees as well as a state of mind or attitude in the actual exercise of judicial functions...."[3] The objective conditions and guarantees include, for example, security of tenure, security of remuneration and immunity from civil liability for judicial acts.

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1 S. Shetreet, *Judges on Trial,* (1976) (hereafter *"Shetreet"*) at 17.

2 [1985] 2 S.C.R. 673 at 687.

3 *Ibid*. at 689.

3. The first qualification of a judge is the ability to make independent and impartial decisions. The subject of judicial impartiality is treated in detail in chapter 6. However, judicial independence is not only a matter of appropriate external and operational arrangements. It is also a matter of independent and impartial decision making by each and every judge. The judge's duty is to apply the law as he or she understands it without fear or favour and without regard to whether the decision is popular or not. This is a cornerstone of the rule of law. Judges individually and collectively should protect, encourage and defend judicial independence.

4. Judges must, of course, reject improper attempts by litigants, politicians, officials or others to influence their decisions. They must also take care that communications with such persons that judges may initiate could not raise reasonable concerns about their independence. As the Honourable J.O. Wilson put it in *A Book for Judges:*

> It may be safely assumed that every judge will know that [attempts to influence a court] must only be made publicly in a court room by advocates or litigants. But experience has shown that other persons are unaware of or deliberately disregard this elementary rule, and it is likely that any judge will, in the course of time, be subjected to ex parte efforts by litigants or others to influence his decisions in matters under litigation before him.
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> . . .
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> Regardless of the source, ministerial, journalistic or other, all such efforts must, of course, be firmly rejected. This rule is so elementary that it requires no further exposition.[4]

[4] J.O. Wilson, *A Book for Judges* (1980) (hereafter "*Wilson*") at 54-55.

5. Given the independence accorded judges, they share a collective responsibility to promote high standards of conduct. The rule of law and the independence of the judiciary depend primarily upon public confidence. Lapses and questionable conduct by judges tend to erode that confidence. As Professor Nolan points out, judicial independence and judicial ethics have a symbiotic relationship.[5] Public acceptance of and support for court decisions depends upon public confidence in the integrity and independence of the bench. This, in turn, depends upon the judiciary upholding high standards of conduct.

> [O]nly by maintaining high standards of conduct will the judiciary (1) continue to warrant the public confidence on which deference to judicial rulings depends, and (2) be able to exercise its own independence in its judgements and rulings.[6]

In short, judges should demonstrate and promote high standards of judicial conduct as one element of assuring the independence of the judiciary.

6. Judges should be vigilant with respect to any attempts to undermine their institutional or operational independence. While care must be taken not to risk trivializing judicial independence by invoking it indiscriminately in opposition to every proposed change in the institutional arrangements affecting the judiciary, judges should be staunch defenders of their own independence. Although the form and nature of the defence must be carefully considered, the propriety in principle of such defence cannot be questioned.[7]

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[5] B. Nolan, "The Role of Judicial Ethics in the Discipline and Removal of Federal Judges," in *Research Papers of the National Commission on Judicial Discipline & Removal Volume I* (1993), pp. 867-912, at 874.

[6] *Ibid.* at 875.

[7] These issues are addressed further in chapter 6, *infra*.

7. Judges should also recognize that not everyone is familiar with these concepts and their impact on judicial responsibilities. Public education with respect to the judiciary and judicial independence thus becomes an important function, for misunderstanding can undermine public confidence in the judiciary. There is, for example, a danger of misperception about the nature of the relationship between the judiciary and the executive, particularly given the Attorney General's dual roles as the cabinet minister responsible for the administration of justice and as the government's lawyer. The public may not get a completely balanced view of the principle of judicial independence from the media which may portray it incorrectly as protecting judges from review of and public debate concerning their actions. Judges, therefore, should take advantage of appropriate opportunities to help the public understand the fundamental importance of judicial independence, in view of the public's own interest.[8]

[8] The phrase "appropriate opportunities" should remind judges that the circumstances of such public interventions must be considered carefully given the constraints of the judicial role. Some of the relevant considerations are discussed more fully in chapter 6, "Impartiality"; see also, for example, J.B. Thomas, *Judicial Ethics in Australia* (2d, 1997) (hereafter *"Thomas"*) at 106-111.

8. Judges are asked frequently to serve as inquiry commissioners. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the appointment. There are examples of Judicial Commissioners becoming embroiled in public controversy and being criticized and embarrassed by the very governments which appointed them. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function.[9] The Position of the Canadian Judicial Council on the Appointment of Federally Appointed Judges to Commissions of Inquiry, approved in March 1998, provides useful guidance in this area.

[9] It is interesting to note that the Australian High Court has ruled that, on separation of powers grounds, there are strict limits in law on the nature of commissions to which judges may be appointed: *Wilson v. Minister for Aboriginal and Torres Strait Islander Affairs* (1996) 70 A.L.J.R. 743; *Kable v. D.P.P.* (1996) 70 A.L.J.R. 814; see also R. MacGregor Dawson, *The Government of Canada* (3d) at 482: "There would seem to be little purpose in taking elaborate care to separate the judge from politics and to render him quite independent of the executive, and then placing him in a position as a Royal Commissioner where his impartiality may be attacked and his findings — no matter how correct and judicial they may be — are liable to be interpreted as favouring one political party at the expense of the other. For many of the inquiries or boards place the judge in a position where he cannot escape controversy: ...It has been proved time and again that in many of these cases the judge loses in dignity and reputation, and his future is appreciably lessened thereby. Moreover, if the judge remains away from his regular duties for very long periods, he is apt to lose his sense of balance and detachment; and he finds that the task of getting back to normal and of adjusting his outlook and habits of mind to purely judicial work is by no means easy."

3. INTEGRITY

Statement: *Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.*

Principles:

1. Judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons.

2. Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

Commentary:

1. Public confidence in and respect for the judiciary are essential to an effective judicial system and, ultimately, to democracy founded on the rule of law. Many factors, including unfair or uninformed criticism, or simple misunderstanding of the judicial role, can adversely influence public confidence in and respect for the judiciary. Another factor which is capable of undermining public respect and confidence is any conduct of judges, in and out of court, demonstrating a lack of integrity. Judges should, therefore, strive to conduct themselves in a way that will sustain and contribute to public respect and confidence in their integrity, impartiality and good judgment. The Canadian judiciary has a strong and honourable tradition in this area which serves as a sound foundation for appropriate judicial conduct.

2. While the ideal of integrity is easy to state in general terms, it is much more difficult and perhaps even unwise to be more specific. There can be few absolutes since the effect of conduct on the perception of the community depends on community standards that may vary according to place and time.

3. As one commentator put it, the key issue about a judge's conduct must be how it "...reflects upon the central components of the judge's ability to do the job."[10] This requires consideration of first, how particular conduct would be perceived by reasonable, fair minded and informed members of the community and second, whether that perception is likely to lessen respect for the judge or the judiciary as a whole. If conduct is likely to diminish respect in the minds of such persons, the conduct should be avoided. As Shaman put it, "...the ultimate standard for judicial

[10] J. Shaman et al., *Judicial Conduct and Ethics* (2d, 1995) (hereafter *"Shaman"*) at 335.

conduct must be conduct which constantly reaffirms fitness for the high responsibilities of judicial office."[11] The judge should exhibit respect for the law, integrity in his or her private dealings and generally avoid the appearance of impropriety.

4. Judges, of course, have private lives and should enjoy, as much as possible, the rights and freedoms of citizens generally. Moreover, an out of touch judge is less likely to be effective. Neither the judge's personal development nor the public interest is well served if judges are unduly isolated from the communities they serve. Legal standards frequently call for the application of the reasonable person test. Judicial fact-finding, an important part of a judge's work, calls for the evaluation of evidence in light of common sense and experience. Therefore, judges should, to the extent consistent with their special role, remain closely in touch with the public. These issues are discussed more fully in the "Impartiality" chapter, particularly section C thereof.

5. A judge's conduct, both in and out of court, is bound to be the subject of public scrutiny and comment. Judges must therefore accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. Judges need to strike a delicate balance between the requirements of judicial office and the legitimate demands of the judge's personal life, development and family.

6. In addition to judges' observing high standards of conduct personally they should also encourage and support their judicial colleagues to do the same as questionable conduct by one judge reflects on the judiciary as a whole.

[11] *Ibid.* at 312.

7. Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to how best to ensure that appropriate action is taken having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the chief justice or associate chief justice of the court.

4. DILIGENCE

Statement: *Judges should be diligent in the performance of their judicial duties.*

Principles:

1. Judges should devote their professional activity to judicial duties broadly defined, which include not only presiding in court and making decisions, but other judicial tasks essential to the court's operation.

2. Judges should take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.

3. Judges should endeavour to perform all judicial duties, including the delivery of reserved judgments, with reasonable promptness.

4. Judges should not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

Commentary:

1. Socrates counselled judges to hear courteously, answer wisely, consider soberly and to decide impartially. These judicial virtues are all aspects of judicial diligence. It is appropriate to add to Socrates' list the virtue of acting expeditiously, but diligence is not primarily concerned with expedition. Diligence, in the broad sense, is concerned with carrying out judicial duties with skill, care and attention, as well as with reasonable promptness.

2. Section 55 of the *Judges Act* (which applies to federally appointed judges) provides that judges must devote themselves to judicial duties.[12] Subject to the limitations imposed by the *Judges Act* and the judicial role, judges are free to participate in other activities that do not detract from the performance of judicial duties. In short, the work of the judge's court comes first.

3. While judges should exhibit diligence in the performance of their judicial duties, their ability to do so will depend on the burden of work, the adequacy of resources including staff, technical assistance and time for research, deliberation, writing and other judicial duties apart from sitting in court. The importance of the judge's responsibility to his or her family is also recognized. Judges should have sufficient vacation and leisure time to permit the maintenance of physical and mental wellness and reasonable opportunities to enhance the skill and knowledge necessary for effective judging.

[12] *Judges Act*, R.S.C. 1985, c.J-1, s.55. The text of the section is as follows:

55. No judge shall, either directly or indirectly, for himself or others, engage in any occupation or business other than his judicial duties, but every judge shall devote himself exclusively to those judicial duties.

4. As mentioned in Commentary 8 of the "Judicial Independence" chapter, judges are sometimes called upon by governments to undertake tasks which take them away from the regular work of their courts. Service on royal commissions of inquiry is one example. A judge should not accept such an appointment without consulting with his or her chief justice to ensure that acceptance of the appointment will not unduly interfere with the effective functioning of the court or unduly burden its other members. The position of the Canadian Judicial Council, approved at its March 1998 mid-year meeting, provides useful guidance in this area.

5. As long ago as *Magna Carta*, it was recognized that judges should have a good knowledge of the law.[13] This knowledge extends not only to substantive and procedural law, but to the real life impact of law. As one scholar put it, law is not just what it says; law is what it does.[14] Sustained efforts to maintain and enhance the knowledge, skills and attitudes necessary for effective judging are important elements of judicial diligence. This involves participation in continuing education programs as well as private study.[15]

6. It is useful to consider the subject of judicial diligence under three headings: Adjudicative Duties, Administrative and Other Out of Court Duties, and Contributions to the Administration of Justice Generally.

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[13] The reference is to Article 45 of *Magna Carta*: "We will not make any justices, sheriffs, or bailiffs, but of such as know the law of the realm and mean duly to observe it" as quoted in D.K. Carrol, *Handbook for Judges* (1961) at 29.

[14] R.A. Samek, "A Case for Social Law Reform" (1977), 55 Can. Bar Rev. 409 at 411.

[15] See for example, Canadian Bar Foundation, *Report of the Canadian Bar Association Committee on the Independence of the Judiciary in Canada* (1985) at 36: "Competence in the discharge of judicial duties is an important factor in the public's support of an independent judiciary."; see generally, M.L. Friedland, *A Place Apart: Judicial Independence and Accountability in Canada* (1995) at 167 ff.; see also chapter 5, "Equality"; the current goal recommended by the National Judicial Institute is a minimum of 10 days of continuing education per year for each judge although workload does not always allow this goal to be achieved.

Adjudicative Duties

7. Diligence in the performance of adjudicative duties includes striving for impartial and even-handed application of the law, thoroughness, decisiveness, promptness and the prevention of abuse of the process and improper treatment of witnesses. While these are all qualities and skills a judge needs, the variety of cases and the particular conduct of counsel and parties require a judge conducting a hearing to emphasize one or more, sometimes at the expense of some of the others, in order to achieve the proper balance. Striking this balance may be particularly challenging when one party is represented by a lawyer and another is not. While doing whatever is possible to prevent unfair disadvantage to the unrepresented party, the judge must be careful to preserve his or her impartiality.

8. The obligation to be patient and treat all before the court with courtesy does not relieve the judge of the equally important duty to be decisive and prompt in the disposition of judicial business. The ultimate test of whether the judge has successfully combined these ingredients into the conduct of the matters before the court is whether the matter has not only been dealt with fairly but in a fashion that is seen to be fair.[16] These issues are addressed in the "Impartiality" chapter, section B.

9. Generally speaking, a judge should perform all properly assigned judicial duties, be punctual unless other judicial duties prevent it and be reasonably available to perform all assigned duties.

[16] See *Brouillard v. The Queen*, [1985] 1 S.C.R. 39 *per* Lamer, J. (as he then was) for the court at 48: "...although the judge may and must intervene for justice to be done, he must none the less do so in such a way that justice is seen to be done." (emphasis in original). The court also cited with approval the discussion of this subject in G. Fauteux, *Le livre du magistrat* (1980) (hereafter *"Livre"*).

10. The proper preparation of judgments is frequently difficult and time consuming. However, the decision and reasons should be produced by the judge as soon as reasonably possible, having due regard to the urgency of the matter and other special circumstances. Special circumstances may include illness, the length or complexity of the case, an unusually heavy workload or other factors making it impossible to give judgment sooner. In 1985, the Canadian Judicial Council resolved that, in its view, reserved judgments should be delivered within six months after hearings, except in special circumstances.[17]

11. It is, of course, often necessary for judges to make findings of credibility and to rule on the propriety of others' conduct. However, judges should avoid making comments about persons who are not before the court unless it is necessary for the proper disposition of the case. For example, irrelevant or otherwise unnecessary comments in judgments about a person's conduct or motives ought to be avoided.[18]

Administrative and Other Out of Court Duties

12. Today, judicial duties include administrative and other out of court activities. Judges have important responsibilities, for example, in case management and pre-trial conferences as well as on committees of the court. These are all judicial duties and should be undertaken with diligence.

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[17] Canadian Judicial Council Resolution September 1985; Legislation and Rules of Court may establish times within which judgment is to be given: see for example *Code of Civil Procedure* (Qc), article 465; repeated inability to give timely judgment has been the basis of a number of complaints to the Canadian Judicial Council: see Canadian Judicial Council, *Annual Report 1992-93* at 14.

[18] See *Commentaries on Judicial Conduct* (1991) (hereafter *"Commentaries"*) at 82-83; Shetreet at 294-5.

Contributions to the Administration of Justice Generally

13. Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by, for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public. These activities are discussed in the "Impartiality" chapter, particularly sections B and C.

14. It is a delicate question whether and in what circumstances a judge should report, or cause to be reported, a lawyer to the lawyer's professional governing body. Taking such action may affect the ability of the judge to continue in the proceeding in which that lawyer is appearing, given that the judge's view of the lawyer's conduct may give rise to a reasonable apprehension of bias against the lawyer or the lawyer's client. On the other hand, a judge is in a special position to observe lawyers' conduct before the court. Putting aside any issue of contempt, generally a judge should take, or cause to be taken, appropriate action where the judge has clear and reliable evidence of serious misconduct or gross incompetence by a lawyer. The judge will have to weigh carefully whether the interests of justice require that he or she wait until the end of the proceeding or whether there are circumstances which require earlier action even though the judge, nonetheless, continues to preside.

5. EQUALITY

Statement: *Judges should conduct themselves and proceedings before them so as to assure equality according to law.*

Principles:

1. Judges should carry out their duties with appropriate consideration for all persons (for example, parties, witnesses, court personnel and judicial colleagues) without discrimination.

2. Judges should strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnic background, sexual orientation or disability.

3. Judges should avoid membership in any organization that they know currently practices any form of discrimination that contravenes the law.

4. Judges, in the course of proceedings before them, should disassociate themselves from and disapprove of clearly irrelevant comments or conduct by court staff, counsel or any other person subject to the judge's direction which are sexist, racist or otherwise demonstrate discrimination on grounds prohibited by law.

Commentary:

1. The Constitution and a variety of statutes enshrine a strong commitment to equality before and under the law and equal protection and benefit of the law without discrimination. This is not a commitment to identical treatment but rather "...to the equal worth and human dignity of all persons" and "...a desire to rectify and prevent discrimination against particular groups suffering social, political and legal disadvantage in our society."[19] Moreover, Canadian law recognizes that discrimination is concerned not only with intent, but with effects.[20] Quite apart from explicit constitutional and statutory guarantees, fair and equal treatment has long been regarded as an essential attribute of justice. While its demands in particular situations are sometimes far from self evident, the law's strong societal commitment places concern for equality at the core of justice according to law.

2. Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, reaches a correct result but engages in stereotyping does so at the expense of the judge's impartiality, actual or perceived.

3. Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognize, demonstrate sensitivity to and correct such attitudes.

[19] *Eldridge v. British Columbia (Attorney General),* [1997] 3 S.C.R. 624 *per* LaForest, J. for the court at 667.

[20] *Ibid.* at 670-671.

4. As is discussed in more detail in the "Impartiality" chapter, judges should strive to ensure that their conduct is such that any reasonable, fair minded and informed member of the public would justifiably have confidence in the impartiality of the judge. Judges should avoid comments, expressions, gestures or behaviour which reasonably may be interpreted as showing insensitivity to or disrespect for anyone. Examples include irrelevant comments based on racial, cultural, sexual or other stereotypes and other conduct implying that persons before the court will not be afforded equal consideration and respect.

Inappropriate conduct may arise from a judge being unfamiliar with cultural, racial or other traditions or failing to realize that certain conduct is hurtful to others. Judges therefore should attempt by appropriate means to remain informed about changing attitudes and values and to take advantage of suitable educational opportunities (which ought to be made reasonably available) that will assist them to be and appear to be impartial. In doing this, however, it is also necessary to take care that these efforts enhance and do not detract from judges' perceived impartiality. All forms or vehicles of education are not necessarily appropriate for judges given the demands of independence and impartiality. Care must be taken that exaggerated or unfounded concern in this regard does not undermine efforts to enhance good judging.

Principle 4 deals with the role of the presiding judge in addressing clearly irrelevant comments which are sexist or racist or other such inappropriate conduct in proceedings before them. This does not require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court. This advice is consistent with the judge's general duty to listen fairly but, when necessary, to assert firm control over the proceeding and to act with appropriate firmness to maintain an atmosphere of dignity, equality and order in the courtroom. Principle 4 certainly does not counsel perfection. Further, applying it may sometimes be a formidable challenge for the judge. The adversarial system gives the parties and their counsel considerable leeway and the relevance and importance of evidence may be difficult to assess accurately as it is being presented. The judge should always do her or his best to strike the right balance. The fact that, when reconsidered later with the benefit of hindsight and the opportunity for further reflection, the situation might have been handled differently is not, of itself, any indication that the judge failed to deal with inappropriate conduct during the proceeding.

6. IMPARTIALITY

Statement: *Judges must be and should appear to be impartial with respect to their decisions and decision making.*

Principles:

A. General

1. Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.

2. Judges should as much as reasonably possible conduct their personal and business affairs so as to minimize the occasions on which it will be necessary to be disqualified from hearing cases.

3. The appearance of impartiality is to be assessed from the perspective of a reasonable, fair minded and informed person.

B. Judicial Demeanour

1. While acting decisively, maintaining firm control of the process and ensuring expedition, judges should treat everyone before the court with appropriate courtesy.

C. Civic and Charitable Activity

1. Judges are free to participate in civic, charitable and religious activities subject to the following considerations:

(a) Judges should avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial duties.

(b) Judges should not solicit funds (except from judicial colleagues or for appropriate judicial purposes) or lend the prestige of judicial office to such solicitations.

(c) Judges should avoid involvement in causes or organizations that are likely to be engaged in litigation.

(d) Judges should not give legal or investment advice.

D. Political Activity

1. Judges should refrain from conduct such as membership in groups or organizations or participation in public discussion which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts.

2. All partisan political activity must cease upon appointment. Judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activity.

3. Judges should refrain from:

(a) membership in political parties and political fund raising;

(b) attendance at political gatherings and political fund raising events;

(c) contributing to political parties or campaigns;

(d) taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice;

(e) signing petitions to influence a political decision.

4. Although members of a judge's family have every right to be politically active, judges should recognize that such activities of close family members may, even if erroneously, adversely affect the public perception of a judge's impartiality. In any case before the court in which there could reasonably be such a perception, the judge should not sit.

E. Conflicts of Interest

1. Judges should disqualify themselves in any case in which they believe they will be unable to judge impartially.

2. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.

3. Disqualification is not appropriate if: (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification, or (b) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

Commentary:

A. General

A.1 From at least the time of John Locke in the late seventeenth century, adjudication by impartial and independent judges has been recognized as an essential component of our society.[21] Impartiality is the fundamental qualification of a judge and the core attribute of the judiciary. The Statement and Principles do not and are not intended to deal with the law relating to judicial disqualification or recusation.

A.2 While judicial impartiality and independence are distinct concepts, they are closely related. This relationship was explored recently by Gonthier, J. on behalf of the majority of the Supreme Court of Canada in *Ruffo v. Conseil de la Magistrature*.[22] The court noted that the right to be tried by an independent and impartial tribunal is an integral part of the principles of fundamental justice protected by s.7 of the Canadian Charter[23] and reaffirmed the following statement by Le Dain, J. in *R. v. Valente:*

> Although there is obviously a close relationship between independence and impartiality, they are never the less separate and distinct values and requirements. Impartiality refers to a state of mind or attitude of the tribunal in relation to the issues and the parties in a particular case. The word "impartial"...connotes absence of bias, actual or perceived
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> . . .

[21] Peter H. Russell, *The Judiciary in Canada: The Third Branch of Government* (1987) (hereafter "Russell").

[22] [1995] 4 S.C.R. 267 at 296-299.

[23] *Ibid.*

> Both independence and impartiality are fundamental, not only to the capacity to do justice in a particular case but also to individual and public confidence in the administration of justice. Without that confidence the system cannot command the respect and acceptance that are essential to its effective operation. It is, therefore, important that a tribunal should be perceived as independent, as well as impartial...[24]

Lamer C.J.C. put it this way in *R. v. Lippé:*

> The overall objective of guaranteeing judicial independence is to ensure a reasonable perception of impartiality; judicial independence is but a "means" to this "end." If judges could be perceived as "impartial" without judicial "independence" the requirement of "independence" would be unnecessary. However, judicial independence is critical to the public's perception of impartiality. Independence is the cornerstone, a necessary prerequisite for judicial impartiality.[25]

A.3 Impartiality is not only concerned with perception, but more fundamentally with the actual absence of bias and prejudgment. This dual aspect of impartiality is captured in the often repeated words that justice must not only be done, but manifestly be seen to have been done. As de Grandpre, J. put it in *Committee for Justice and Liberty v. National Energy Board*,[26] the test is whether "an informed person, viewing the matter realistically and practically — and having thought the matter through —" would apprehend a lack of impartiality in the decision maker. Whether there is a reasonable apprehension of bias is to be assessed from the point of view of a reasonable, fair minded and informed person.

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[24] [1985] 2 S.C.R. 673 at 685 and 689.

[25] [1991] 2 S.C.R. 114 at 139.

[26] [1978] 1 S.C.R. 369, most recently endorsed in *R.D.S. v. The Queen,* [1997] 3 S.C.R. 484 *per* Cory, J. at 530 and *per* L'Heureux-Dubé and McLachlin, JJ. at 502.

A.4 "True impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind."[27] The judge's fundamental obligation is to strive to be and to appear to be as impartial as is possible. This is not a counsel of perfection. Rather it underlines the fundamental nature of the obligation of impartiality which also extends to minimizing any reasonable apprehension of bias.

A.5 A reasonable perception that a judge lacks impartiality is damaging to the judge, the judiciary as a whole and the good administration of justice. Judges should, therefore, avoid deliberate use of words or conduct, in and out of court, that could reasonably give rise to a perception of an absence of impartiality.[28] Everything from his or her associations or business interests to remarks which the judge may consider to be "harmless banter," may diminish the judge's perceived impartiality.[29]

A.6 The expectations of litigants may be very high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favour. Therefore every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized. On the other hand, judges have an obligation to treat all parties fairly and evenhandedly; those litigants who perceive bias where no reasonable, fair minded and informed person would find it are not entitled to different or special treatment for that reason. Moreover, as discussed below, the judge also has the obligation to ensure that proceedings are conducted in an orderly and efficient manner. This may well require an appropriate degree of firmness.

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[27] In *R. D. S. v. The Queen, supra,* note 26, at 504, L'Heureux-Dubé and McLachlin, JJ. (Gonthier and LaForest, JJ., concurring) cited this passage from page 12 of *Commentaries* with approval.

[28] American Bar Association, *Model Code of Judicial Conduct (1990)* (hereafter *"ABA Model Code (1990)"*), Commentary to Canon 3B.

[29] *Canadian Judicial Council Annual Report 1992-93* at 16.

It is helpful to address the question of impartiality under more specific headings.

B. Judicial Demeanour

B.1 Litigants and others scrutinize judges very closely for any indication of unfairness. Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgment and intemperate and impatient behaviour may destroy the appearance of impartiality. On the other hand, judges are obliged to ensure that proceedings are conducted in an orderly and efficient manner and that the court's process is not abused. An appropriate measure of firmness is necessary to achieve this end. A fine balance is to be drawn by judges who are expected both to conduct the process effectively and avoid creating in the mind of a reasonable, fair minded and informed person any impression of a lack of impartiality. These issues are more fully discussed in chapters 4 and 5, "Diligence" and "Equality." It bears repeating, however, that any action which, in the mind of a reasonable, fair minded and informed person who has considered the matter, would give rise to reasoned suspicion of a lack of impartiality must be avoided. When such impressions are created, they affect not only the litigants before the court but public confidence in the judiciary generally.[30]

C. Civic and Charitable Activity

C.1 A judge is appointed to serve the public. Many persons appointed to the bench have been and wish to continue to be active in other forms of public service. This is good for the community and for the judge, but carries certain risks. For that reason, it is important to address the question of the limits that judicial appointment places upon the judge's community activities.

[30] See chapter 4, "Diligence" and chapter 5, "Equality."

C.2 The judge administers the law on behalf of the community and therefore unnecessary isolation from the community does not promote wise or just judgments. The Right Honourable Gerald Fauteux put the matter succinctly and eloquently in *Le livre du magistrat*[31] (translation):

> [there is no intention] to place the judiciary in an ivory tower and to require it to cut off all relationship with organizations which serve society. Judges are not expected to live on the fringe of society of which they are an important part. To do so would be contrary to the effective exercise of judicial power which requires exactly the opposite approach.

C.3 The precise constraints under which judges should conduct themselves as regards civic and charitable activity are controversial inside and outside the judiciary. This is not surprising given that the question involves balancing competing considerations. On one hand, there are the beneficial aspects, both for the community and the judiciary, of the judge being active in other forms of public service. This needs to be assessed in light of the expectations and circumstances of the particular community. On the other hand, the judge's involvement may, in some cases, jeopardize the perception of impartiality or lead to an undue number of recusals. If this is the case, the judge should (unless the principle of necessity, discussed in section E.17, is implicated) avoid the activity.

C.4 *The Code of Conduct for United States Judges* applicable to the federally appointed judiciary in the United States, while not completely appropriate for Canadian adoption, provides a useful starting point:

[31] *Livre* at 17.

Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be regularly engaged in adversary proceedings in any court.

(2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of the judicial office for that purpose, but the judge may be listed as an officer, director, or trustee of such an organization. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

(3) A judge should not give investment advice to such an organization, but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C.5 These provisions seek to strike a reasonable balance between community involvement and the preservation of judicial impartiality and, although not specifically adopted in these Principles, nonetheless may provide helpful guidance.

C.6 Subject to the discussion that follows, judges are at liberty to be members and directors of civic and charitable organizations and, of course, to exercise freedom of religion. In general, however, a judge should not allow the prestige of judicial office to be used in aid of fund raising for particular causes, however worthy. This principle suggests that judges (apart from requests to judicial colleagues) should not personally solicit funds or lend their names to financial campaigns. *Commentaries on Judicial Conduct* notes that when a judge is directly involved in fund raising there may be a temptation for lawyers or litigants who are canvassed to try to curry favour with the judge by contributing. Moreover, such solicitation identifies the judge with the objects of the organization.[32] However, the simple appearance of the judge's name as a director (or similar position) on the organization's general letterhead is not inappropriate.

C.7 Judges must carefully assess whether to serve on Boards of Directors of organizations other than those serving the professional or educational requirements of judges. It is inappropriate (and prohibited) for a judge to serve on the Board of Directors of a commercial enterprise.[33]

C.8 What is the position with respect to volunteer service on boards of community, charitable, religious or educational organizations? Many institutions solicit and/or receive money from government. Except for funds required for the proper administration of justice, it is not appropriate for the judge to be directly involved in soliciting funds from government. Boards of Directors are responsible for the conduct of the organization. The organization may become involved in disputes with staff or others, sue or be sued, breach government regulations of all sorts or otherwise be implicated in matters of public controversy.

[32] *Commentaries* at 18-19.

[33] *Judges Act,* R.S.C. 1985, c.J-1, s.55. (See note 12.)

Any of these situations could be embarrassing for the judge or his or her colleagues and might give rise to reasonable apprehension of a lack of impartiality with respect to certain issues that might arise for judicial consideration. Fellow directors may seek and rely upon the judge's advice on legal matters. But it is inappropriate for the judge to give such advice. The decision to serve must be made after carefully weighing these risks in the particular circumstances.

C.9 Several Canadian judges have served as chancellors of universities or dioceses. Others have served on the boards of schools, hospitals or charitable foundations. Such participation may now present risks that did not appear evident in the past. These risks must be carefully weighed. Universities, churches and charitable and service organizations are now involved in litigation and matters of public controversy in ways that were virtually unheard of even in the very recent past. A judge serving as a chancellor of a university or a diocese or as a board member may be placed in an awkward position if the organization should become involved in litigation or matters of public controversy.

C.10 Requests for letters of reference may be difficult for a judge. There are certainly factors a judge will want to consider before agreeing to provide such a letter. One is that the judge should avoid being seen as using the prestige of judicial office to advance a person's private interests. The judge must also avoid giving the impression that certain persons stand in a particular position of influence or favour with the judge. These factors combine to suggest that the judge should agree to give a reference only where it is clear, first, that it is the judge's knowledge of the individual that is called for and not simply the status of the judge and, second, where the judge has an important perspective about the individual to contribute such that it would be unfair to the individual and the selection process were the judge to refuse.

Commentaries reports that a large majority of the judges who responded to the questionnaire leading to the production of that text approved a judge's giving character references. *Commentaries* also noted however that the practices of judges vary and that a number of respondents professed some reluctance.[34] While this matter is one on which judges differ, the two part test set out in the preceding paragraph is offered as an approach that strikes an acceptable balance between the desirability of obtaining the benefit of the judge's views while minimizing the risk of undermining the judge's neutrality.

Commentaries states that judges may properly assist judicial appointment advisory committees on a strictly confidential basis. More generally, the commentary on the *ABA Model Code (1990)* addresses the matter as follows:

> Although a judge should be sensitive to possible abuse of the prestige of office, a judge may provide a letter or recommendation based on the judge's personal knowledge. A judge also may permit the use of the judge's name as a reference, and respond to a request for a personal recommendation when solicited by a selection of authorities, such as a prospective employer, Judicial Selection Committee or Law School Admissions Office.[35]

Once again, it is suggested that the two part test proposed for letters of reference generally strikes the right balance in the specific context of judicial appointments even though the result is a somewhat more restrictive approach than that of *ABA Model Code (1990)*.

[34] *Commentaries* at 33-35.

[35] *ABA Model Code (1990)*, Commentary to Canon 2B.

D. Political Activity

D.1 This section deals with out of court activities of judges. In particular, it addresses political activity and other conduct such as memberships in groups or organizations or participation in public debate and comment which, from the perspective of a reasonable, fair minded and informed person could undermine a judge's impartiality as regards issues that could come before the courts.

D.2 Commentators are unanimous that "all partisan political activity and association must cease absolutely and unequivocally with the assumption of judicial office."[36] Two considerations support this rule. Impartiality, actual and perceived, is essential to the exercise of the judicial function. Partisan political activity or out of court statements concerning issues of public controversy by a judge undermine impartiality. They are also likely to lead to public confusion about the nature of the relationship between the judiciary on the one hand and the executive and legislative branches on the other. Partisan actions and statements by definition involve a judge in publicly choosing one side of a debate over another. The perception of partiality will be reinforced if, as is almost inevitable, the judge's activities attract criticism and/or rebuttal. This in turn tends to undermine judicial independence.[37] In short, a judge who uses the privileged platform of judicial office to enter the political arena puts at risk public confidence in the impartiality and the independence of the judiciary.

[36] *Commentaries* at 9; see also *Livre* at 28; *Shaman* at 360 ff; *Wilson* at 7; Judges in Canada (as in the U.S. and England) are entitled to vote and there is nothing unethical in doing so.

[37] *Russell* at 87-88.

D.3 Principles D.3(a) and (b) are widely accepted examples of overt political activity in which judges should not engage after appointment.[38] Judges should also consider whether mere attendance at certain public gatherings might reasonably give rise to a perception of ongoing political involvement or reasonably put in question the judge's impartiality on an issue that could come before the court.

D.4 Principle D.3(c) counsels against making contributions to political parties. The rationale of this advice is that the judge should not be identified with the political process or, subject to principle D.3(d), with specific positions on matters of political controversy. The Nova Scotia Judicial Council was confronted with a complaint that a judge had contributed to a political party's fund to alleviate the financial distress of its former leader who was a friend and classmate of the judge. The judge had also contributed to the political campaigns of close relatives and made three other undesignated contributions to the same political party. The Nova Scotia Judicial Council cautioned the judge, reasoning that:

> The public perception, we believe, is that where a judge makes a financial contribution to such highly placed political persons, as the three who benefitted from the gifts of this judge, it is impossible to separate them from the political organizations of which they are a part... Since, in our opinion, donations of money are but one way of participating in a political organization, the making of them is deemed to be political activity in which a judge should not engage.[39]

[38] See e.g. *Wilson* at 7-9; *Thomas* at 156.

[39] Nova Scotia Judicial Council, *Report Concerning the Conduct of His Honour Paul S. Niedermeyer,* June 17, 1991. (Hereafter *"Niedermeyer Ruling."*)

D.5 The application of Principle D.3(d), which counsels avoidance of public participation in controversial political discussions, is more open to debate and problems of application than the other principles in this section. Judges on appointment do not surrender all of the rights to freedom of expression enjoyed by everyone else in Canada. But, the office of judge imposes restraints that are necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attack or be inconsistent with the dignity of judicial office. If either is the case the judge should avoid such involvement.

D.6 Principle D.3(d) recognizes that, while restraint is the watchword, there are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice, or the personal integrity of the judge. Even with respect to these matters, however, a judge should act with great restraint. Judges must remember that their public comments may be taken as reflective of the views of the judiciary; it is difficult for a judge to express opinions that will be taken as purely personal and not those of the judiciary generally. There are usually alternatives to public discussion. For example, the chief justice of the court may raise the matter formally with the appropriate official or officials. Except for statutory and constitutional duties and matters affecting the operation of the courts or the proper administration of justice, chief justices are in no different position than their colleagues.

The Principle suggests a somewhat larger sphere for such interventions than that described in the 1982 comments of the Canadian Judicial Council in the Berger matter. In dealing with that complaint, the Council stated that judges should not speak on controversial political matters that do not directly affect the operation of the courts. The suggestion here is that, having regard to judges' special knowledge and experience in matters relating to the administration of justice and their obligation to preserve judicial independence, the proper ambit for their out of court interventions may be somewhat wider in appropriate cases. Where the terms of reference require, judges serving on Commissions of Inquiry may exercise greater latitude in commenting on issues relevant to the inquiry. Judges serving in this way, however, must continue to bear in mind that they are judges even while serving for the time being as commissioners.

D.7 Nothing in these Principles prevents or indeed discourages judicial participation in law reform or other scholarly or educational activities of a nonpartisan nature directed to the improvement of the law and the administration of justice. Judges seconded to law reform commissions may exercise greater latitude with respect to matters under consideration by the Commission. The Commentary to the *ABA Model Code (1990)* indicates that "...[a]s a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and administration of justice... Judges may participate in efforts to promote the fair administration of justice, the independence of the judiciary and the integrity of the legal profession."[40] However, when engaging in such activities, the judge must not be seen as "lobbying" government or as indicating how he or she would rule if particular situations were to come before the judge in court. This, of course, does not prevent judges from making representations to government concerning judicial independence or, through the appropriate mechanisms, with respect to salaries

[40] *ABA Model Code (1990),* Commentary to Canon 4B.

and benefits. Discussion of the law for educational purposes or pointing out weaknesses in the law in appropriate settings is in no way discouraged. For example, in certain special circumstances, judicial commentary on draft legislation may be helpful and appropriate, so long as the judge avoids giving informal interpretations or opinions on constitutionality.[41] Normally, judicial commentary on proposed legislation or on other questions of government policy should relate to practical implications or legislative drafting and should avoid issues of political controversy. In general, such judicial commentary should be made as part of a collective or institutionalized effort by the judiciary, not that of an individual judge.

D.8 Principle D.3(e) suggests that judges should not sign petitions to influence political decisions. Petitions are an example of a situation in which a judge is likely to be perceived as supporting a particular point of view or as lobbying, albeit rather passively, to bring about change. As the Nova Scotia Judicial Council put it, the requirement of complete severance from all political activities means that "a judge shall not try to influence politicians or political issues."[42] This is precisely the purpose of petitions.

D.9 The duties of chief justices and, in some cases, those of other judges having administrative responsibilities will lead to contact and interaction with government officials, particularly the attorneys general, the deputy attorneys general and court services officials. This is necessary and appropriate, provided the occasions of such interactions are not partisan in nature and the subjects discussed relate to the administration of justice and the courts and not to individual cases. Judges, including chief justices, should take care that they are not perceived as being advisors to those holding political office or to members of the executive.

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[41] The Canadian Judicial Council, for example, struck a special committee which reviewed proposals for a new General Part of the *Criminal Code* and facilitated meetings between senior government officials and judges to discuss child support guidelines.

[42] *Niedermeyer Ruling* at 12.

E. Conflicts of Interest

E.1 Judges should organize their personal and business affairs to minimize the potential for conflict with their judicial duties. Notwithstanding the judge's best efforts, situations will arise in which the appearance of justice requires the judge to disqualify himself or herself. The issues to be addressed in this section are: (1) what constitutes a conflict of interest? (2) in what circumstances should a judge disclose circumstances which may constitute a conflict of interest? (3) in what circumstances will consent of the parties obviate the need for the judge to be disqualified? and (4) in what circumstances will it be necessary for a judge to preside even though there is an apparent conflict of interest? Each will be addressed in turn.

E.2 What Constitutes a Conflict of Interest?
As Perell puts it, "A common or unifying theme for the various classes of conflicts of interest is the theme of divided loyalties and duties."[43] The potential for conflict of interest arises when the personal interest of the judge (or of those close to him or her) conflicts with the judge's duty to adjudicate impartially. Judicial impartiality is concerned both with impartiality in fact and impartiality in the perception of a reasonable, fair minded and informed person. In judicial matters, the test for conflict of interest must include both actual conflicts between the judge's self interest and the duty of impartial adjudication and circumstances in which a reasonable fair minded and informed person would reasonably apprehend a conflict.

E.3 A number of texts and commentaries offer guidance to judges on this subject. The Hon. J.O. Wilson in *A Book for Judges*, for example, says a judge's disqualification would be justified by a pecuniary interest in the outcome; a close family, personal or professional relationship with a litigant, counsel or witness; or the judge having expressed views evidencing bias regarding a litigant.[44]

[43] Paul M. Perell, *Conflicts of Interest in the Legal Profession* (1995) at 5.

[44] *Wilson* at 23.

E.4 The *Code of Civil Procedure* of Quebec is unique in Canada in offering authoritative guidance. The subject of disqualification is expressly addressed in articles 234 and 235. Included among the grounds for disqualification are, for example, the judge being related to one of the parties within the degree of first cousin, having acted for one of the parties, having an interest in the outcome, etc.[45]

E.5 As elsewhere in this area, the concern is with reasonable perception, as well as actual conflict of interest. In general, a judge should not preside over a case in which he or she has a financial or property interest that could be affected by its outcome or in which the judge's interest would give rise in a reasonable, fair minded and informed person, to reasoned suspicion that the judge would not act impartially.[46] This general rule applies whether the interest is itself the subject matter of the controversy or where the outcome of the case could substantially affect the value of any interest or property owned by the judge, the judge's family or close associates. It will not apply where the judge's interest is limited to one shared by citizens generally.

E.6 This broadly formulated rule cannot be strictly applied, however. Owning an insurance policy, having a bank account, using a credit card or owning shares in a corporation through a mutual fund would not, in normal circumstances give rise to conflict or the appearance of conflict unless the outcome of the proceedings before the judge could substantially affect such holdings. Nor should small holdings, such as those contemplated by the *de minimis* provisions of *ABA Model Code (1990)* give rise to any reasonable question concerning the judge's impartiality.[47] However, if the holding is more substantial, the judge should not sit, subject to considerations of necessity discussed in section E.17.

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45 *Code of Civil Procedure,* art. 234-235.

46 *Shaman* at 136; the language is modelled on that of Rand, J. in *Szilard v. Szasz,* [1965] S.C.R. 3 at 4.

47 See note 28; *de minimis* is defined as being "an insignificant interest that could not raise a reasonable question as to the judge's impartiality."

E.7 Should interests of members of the judge's family, close friends or associates be considered as giving rise to a perception of conflict of interest? As a matter of broad general principle, one can imagine circumstances in which the interests of the judge's family, close friends or associates in matters before the judge could give rise to a reasonable apprehension of conflicting interest and duty. To attempt to define these matters with greater precision, however, is another matter. Article 234(1) and (9) of the *Code of Civil Procedure* define precisely the degree of family relationship with parties or counsel which requires recusal. Article 235 refers to the personal interest of the judge or "his consort" as justifying recusal. *ABA Model Code (1990)* defines the degree of family relationship which should lead to disqualification.[48]

E.8 While these approaches introduce much needed clarity, it may come at the expense of attention to the general principle that a judge (subject to the discussion in section E.17 below) should disqualify him or herself if aware of any interest or relationship which, to a reasonable, fair minded and informed person would give rise to reasoned suspicion of lack of impartiality. For the purposes of national principles of judicial ethics for Canada, the temptation to become more specific than this should be avoided.

[48] See for example, Canon 3E(d):

> (d) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
>
> (i) is a party to the proceeding, or an officer, director or trustee of a party;
>
> (ii) is acting as a lawyer in the proceeding;
>
> (iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the outcome of the proceeding;
>
> (iv) is to the judge's knowledge likely to be a material witness in the proceeding.
>
> "Third degree of relationship." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece.

E.9 Personal insolvency and bankruptcy give rise to a variety of potential difficulties for judges. Whether, and if so in what circumstances, these difficulties will provide grounds for removal of a judge is not an issue that falls within the range of questions addressed by these Principles. As the *Bankruptcy Act,* section 175, recognizes, bankruptcy may occur by misfortune and without misconduct. For instance, a judge could be held liable for a defalcation of a former law partner or for an accident involving the judge's vehicle driven by his or her spouse or child. Having regard to this fact, no general rule can, or should be formulated.

E.10 The judge who is in financial difficulty will have to be particularly vigilant for conflicts of interest, both actual and perceived. There will be difficulties in the judge presiding over matters involving any of his or her creditors or, perhaps, other matters raising similar issues. Serious questions arise if any aspect of the judge's financial difficulties becomes contentious. In this event, the possibility of the judge appearing before a judicial colleague as a party or a witness would arise. The actual day-to-day impact of the financial difficulties on the judge's ability to perform the job will obviously vary considerably depending on the circumstances and the size of the jurisdiction. Circumstances which might cause very minor inconvenience to a large court might nonetheless have a significant practical impact on a smaller court. Once again, however, it seems impossible and unwise to try to deal with the scores of possibilities other than through application of the general principle that, where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge will not be impartial, the judge should not sit. In certain circumstances, the principles relating to diligence might also be relevant if the judge's conflicts were so extensive that they effectively prevented the judge from carrying out his or her duties. A judge's bankruptcy may raise many of these issues in acute form. When judges become aware of financial or other similar circumstances likely to affect public perception of their impartiality, they should draw them to the attention of their chief justices.

E.11 Disclosure

The absence in Canada of a general statutory requirement for financial disclosure does not resolve the ethical question of when a judge should disclose to the parties a matter which might be considered as giving rise to a potential conflict of interest. The position in England and Australia appears to be that the judge should disclose any interest or factor which might suggest that the judge should be disqualified.[49] This approach, however, is premised on the view that the disclosure is made with a view to seeking the consent of the parties for the judge to hear the case.

E.12 Whether there are circumstances in which the consent of the parties is essential to permit the judge to hear the case is the subject of the next section. However, the issues of disclosure and consent are not necessarily linked. For now, it can be concluded that a judge should disclose on the record anything which might support a plausible argument in favour of disqualification.

E.13 Consent of the Parties

Commentaries on Judicial Conduct acknowledges the practical difficulty of attempting to cure a concern about disqualification by disclosure to and consent of the parties. The main concern is that such an approach puts counsel in an unfair position — as one respondent put it, to either consent or to risk being seen as a trouble maker.[50]

E.14 It is not suggested that consent of the parties would justify a judge continuing in a situation in which he or she felt that disqualification was the proper path. The issue of consent, therefore, arises only in those cases in which the judge believes that there is an arguable point about disqualification but in which the judge believes, at the end of the day, a reasonable person would not apprehend a lack of impartiality. Putting the matter this way perhaps highlights the difficult position in which counsel

[49] See for example, *Shetreet* at 305; *Thomas* at 53-55; *Commentaries* at 72; *Wilson* at 30-31.

[50] *Commentaries* at 74.

is placed. By disclosing the matter and seeking consent to continue, the judge is in essence saying that no reasonable person should apprehend a lack of impartiality. Therefore, if counsel fails to consent, counsel (or their clients) may appear to be taking an unreasonable position. A partial answer to this concern may be to adopt the English practice in which the judge is told that an objection was made by one of the parties without being told which side objected.[51]

E.15 The better approach is for the judge to make the decision without inviting consent, perhaps in consultation with his or her chief justice or other colleague. If the judge concludes that no reasonable, fair minded and informed person, considering the matter, would have a reasoned suspicion of a lack of impartiality, the matter should proceed before the judge. If the conclusion is the opposite, the judge should not sit.

E.16 The judge should make disclosure on the record and invite submissions from the parties in two situations. The first arises if the judge has any doubt about whether there are arguable grounds for disqualification. The second is if an unexpected issue arises shortly before or during a proceeding. The judge's request for submissions should emphasize that it is not counsel's consent that is being sought but assistance on the question of whether arguable grounds exist for disqualification and whether, in the circumstances, the doctrine of necessity applies.

E.17 Necessity

Extraordinary circumstances may require departure from the approaches discussed above. The principle of necessity holds that a judge who would otherwise be disqualified may hear and decide a case where failure to do so could result in an injustice. This might arise where an adjournment or mistrial would work undue hardship or where there is no other judge reasonably available who would not be similarly disqualified.[52]

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[51] See *Shetreet* at 305.

[52] See, for example, *Wilson* at 29; *Shaman* at 99-101 and *Shetreet* at 304.

E.18 Acting as Executor

There is a range of views as to whether a judge should serve as an executor. Shetreet describes the English practice in which judges may serve as executors of estates of friends or relatives, provided there is no remuneration, the judge is not involved in the day-to-day administration of the estate and the required work does not interfere with his or her judicial duties.[53] In the United States, the *ABA Model Code (1990)* deals with this point as follows:

> 4E. Fiduciary Activities
>
> (1) A judge shall not serve as executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary except for the estate, trust or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.
>
> (2) A judge shall not serve if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.
>
> (3) The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.[54]

In Canada, *A Book for Judges, Le livre du magistrat*[55] and *Commentaries on Judicial Conduct*[56] agree that, as a general rule, the judge should not act but that it is permissible to do so if the estate is of a

[53] *Shetreet* at 331.
[54] *ABA Model Code (1990)*, Canon 4E.
[55] *Livre* at 24.
[56] *Commentaries* at 35-6.

relative or close friend and it appears to be simple and not contentious. Should these predictions prove wrong, these authorities all advise the judge to retire from the executorship.

In summary, it is suggested that a sound approach to the question is as follows:

1. As a general rule, a judge should not act as an executor.

2. It is not improper for a judge to so act if:

(a) he or she does so without fee;

(b) the estate is of a close friend or relative;

(c) it is unlikely to be contentious; and,

(d) performance of the obligations will not interfere with judicial duties.

3. Having embarked on the executorship, the judge should retire from it if the estate becomes contentious or if the executorship interferes with the performance of judicial duties.

E.19 Former Clients

Judges will face the issue of whether they should hear cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge practised before appointment. There are three main factors to be considered. First, the judge should not deal with cases concerning which the judge actually has a conflict of interest, for example, as a result of having had confidential information concerning the matter prior to appointment. Second, circumstances must be avoided in which a reasonable, fair minded and informed person would have a reasoned suspicion that the judge is not impartial. Third, the judge should not withdraw unnecessarily as to do so adds to the burden of his or her colleagues and contributes to delay in the courts.

The following are some general guidelines which may be helpful:

(a) A judge who was in private practice should not sit on any case in which the judge or the judge's former firm was directly involved as either counsel of record or in any other capacity before the judge's appointment.

(b) Where the judge practised for government or legal aid, guideline (a) cannot be applied strictly. One sensible approach is not to sit on cases commenced in the particular local office prior to the judge's appointment.

(c) With respect to the judge's former law partners, or associates and former clients, the traditional approach is to use a "cooling off period," often established by local tradition at 2, 3 or 5 years and in any event at least as long as there is any indebtedness between the firm and the judge and subject to guideline (a) above concerning former clients.

(d) With respect to friends or relatives who are lawyers, the general rule relating to conflicts of interest applies, i.e., that the judge should not sit where a reasonable, fair minded and informed person would have a reasoned suspicion that the judge would not be impartial.

Related issues, requiring similar approaches, may arise in relation to overtures to the judge while still on the bench for post-judicial employment. Such overtures may come from law firms or prospective employers. There is a risk that the judge's self-interest and duty would appear to conflict in the eyes of a reasonable, fair minded and informed person considering the matter. A judge should examine such overtures in this light. It should also be remembered that the conduct of former judges may affect public perception of the judiciary.

4 德國法官行爲守則

四、德國法官行為守則

德國法官法

第三十九條　（獨立性之保障Wahrung der Unabhängigkeit）

法官於其職務內及職務外之行為暨政治活動中，應保持人民對其獨立性之信任不受損害之態度。

第四十條　（仲裁法官及調解人Schiedsrichter und Schlichter）

1. (1)法官經仲裁契約當事人共同選任或經無利害關係者選任者，始得經核准兼任仲裁法官或仲裁鑑定人（Schiedsrichter oder Schiedsgutachter）。(2)決定給與核准其兼任時，如仲裁之案件正由該法官承辦或依事務分配將由其承辦者，應拒絕核准。
2. 兼任社團間或社團與第三人間之調解人者，準用前項規定。

第四十一條　（法律上之鑑定Rechtsgutachten）

1. 法官不得於其職務外為法律上之鑑定或受報酬而解答關於法律事件之諮詢。
2. (1)有公務員地位之法學或政治學教授同時擔任法官職務者，得經司法行政最高機關之許可，為法律上之鑑定及為關於法律事件諮詢之解答。(2)此項許可得為一般性或個別為之，但以該教授之法官職務不超過兼職範圍

且公務利益不致受損為限。

第四十二條　（司法上之兼職Nebentätigkeit in der Rechtspflege）

法官僅就司法上或法院行政上之工作有兼任義務。

第四十三條　（評議之秘密Beratungsgeheimnis）法官對於評議及表決之過程，於其離職後仍須嚴守秘密。

摘錄自司法院發行德意志聯邦共和國法官法一書

Deutsches Richtergesetz

§39 Wahrung der Unabhängigkeit

Der Richter hat sich innerhalb und auBerhalb seines Amtes, auch bei politischer Betätigung, so zu verhalten, daB das Vertrauen in seine Unabhängigkeit nicht gefahrdet wird.

§40 Schiedsrichter und Schlichter

(1) Eine Nebentätigkeit als Schiedsrichter oder Schiedsgutachter darf dem Richter nur genehmigt werden, wenn die Parteien des Schiedsvertrags ihn gemeinsam beauftragen oder wenn er von einer unbeteiligten Stelle benannt ist. Die Genehmigung ist zu versagen, wenn der Richter zur Zeit der Entscheidung über die Erteilung der Genehmigung mit der Sache befaBt ist oder nach der Geschäfts-verteilung befaBt werden kann.

(2) Auf eine Nebentätigkeit als Schlichter in Streitigkeiten zwischen Vereinigungen oder zwischen diesen und Dritten ist Absatz 1 entsprechend anzuwenden.

§41 Rechtsgutachten

(1) Ein Richter darf weder auBerdienstlich Rechtsgutachten erstatten, noch entgeltlich Rechtsauskünfte erteilen.

(2) Ein beamteter Professor der Rechte oder der politischen Wissenschaften, der gleichzeitig Richter ist. darf mit Genehmigung der obersten Dienstbehörde der Gerichtsverwaltung Rechtsgutachten erstatten und Rechtsauskünfte erteilen. Die Genehmigung darf allgemein oder für den Einzelfall nur erteilt werden, wenn die richterliche Tätigkeit des Professors nicht über den Umfang einer Nebentätigkeit hinausgeht und nicht zu besorgen ist, daB dienstliche Interessen beeinträchtigt werden.

§42 Nebentätigkeit in der Rechtspflege

Ein Richter ist zu einer Nebentätigkeit (Nebenamt, Nebenbesc -häftigung) nur in der Rechtspflege und in der Gerichtsverwaltu ng verpflichtet.

§43 Beratungsgeheimnis

Der Richter hat über den Hergang bei der Beratung und Abst immung auch nach Beendigung seines Dienstverhältnisses zu sch weigen

（補充說明）
德國法官之行為，除應遵守法官法所規定之特殊義務外，另依德國之通說，法官亦是國家之公務員，因此德國公務員法所規定公務員應遵守之義務，除與其法官職務有牴觸者外，亦應遵守。而查德國聯邦公務員法有關公務員應遵守之一般義務（聯邦公務員法第52條至第77條），摘其主要者不外乎遵守法律及合法命令、遵守勤務時間、穿著制服、競業禁止、不論職務內外之行為應維護職業尊嚴、不得違法收受報酬贈與等等。

至法官之特殊義務，其行為除應遵守法官法第39條至第43條之規定外，須附加說明者：

1. 德國法官法第26條第1項規定法官僅於不侵害其獨立審判之限度內受職務監督。同條第2項規定職務監督在前項限制，包括制止法官違法執行職務及督促法官合法迅速執行職務。因此只要是不觸及審判獨立性核心範圍，諸如開庭時以非屬裁判言詞斥責被告不當行為之追究；年終由法官就未結案件提出報告等，均是合法。
2. 德國因鑑於戰前納粹之患害，因此除了在基本法上對人民之參政權有詳細之保障外，另學說上對人民政治權利亦採取較廣泛之解釋，因此法官之政治活動，無論是參與政黨或是表示意見，依我國法界人士譯自德國學者著述，稱法官如何在此類活動中，保持人民對其獨立性之信任，則完全任諸法官個人之智慧及責任意識。

5 日本法官行爲守則

五、日本法官行為守則

日本裁判官彈劾法第二條（依彈劾而罷免之事由）

依彈劾而罷免法官，依左列規定。

1. 顯然違反職務上之義務，或廢弛職務太甚者。
2. 其他不問職務之內外，有顯失法官威信之不當行為者。

裁判官彈劾法

第二條（彈劾による罷免の事由）彈劾により裁判官を罷免するのは、左の場合とする。

1. 職務上の義務に著しく違反し、又は職務を甚だしく怠つだとき。
2. その他職務の內外を問わず、裁判官としての威信を著しく失らべき非行があつたとき。

而依日本學者見解，法官的「職務上之義務」，嚴格來說，乃指法官於具體的職務行使時應遵守的個別的義務。至於法官的義務，日本學者通說認有下列：

(1) 一般性的義務

甲. 身為公務員的法官，有尊重並擁護日本國憲法之義務。

乙. 法官身為全體國民之公僕，應時常以公共利益為指標而行動，不得為私的利益利用其地位。

丙. 法官於行使職務時，應盡全力並專心為之。

丁. 法官應保守其職務上之秘密。

(2) 審判事務行使的義務

甲. 日本憲法第76條第3項規定：「全體法官，應從其良心並獨立行使其職權，僅受本憲法及法律之拘束」。

乙. 法官於評議時，應陳述其意見。

丙. 法官就評議之經過及各法官之意見及其多少之數，原則上應保守秘密。

(3) 司法行政事務行使上的義務，乃指法官於執行司法行政事務時，負有服從司法行政上監督者所發命令之義務。

故在彈劾時，僅以法官表現於外，從而於客觀上可得認識的身體的動靜為考量，至於法官的思想、信念等內心的事件本身，並不予考量。因此，法官有違反「職務上之義務」之作為，或有廢弛「職務」之不作為時，大約可認為存在彈劾基礎之事實。但此種事實並不必然立即構成彈劾事由，惟有被客觀地評價為「顯然違反」職務上之義務，或「廢弛」職務「太甚」之情形下，才構成「彈劾事由」。而此種「顯然」、「太甚」等評價的實質內容，並非單單意味著不當行為程度之輕重，而應解為「對國民信託之違背」。然而，法官的何種不當行為是否皆該當於「對國民信託之違背」之評價，應考慮憲法的諸原則（特別是關於司法權的諸原則或關於基本人權的規定等等）、法院或法官制度的理念及其現狀、國民的價值觀或意識的動向、政治經濟社會的現勢等等有關「司法」的各種

要件。

又彈劾法所謂「不當行為」，學者指「一般而言雖有不正的行為或不好的行為等意思，但作為法律用語，則係指不適合該人社會的、法律的地位，而於社會通念上值得被非難的行為或不行為，並不以違法行為為必要。於具體的場合，某特定行為是否該當於非行，須依該人的地位、導致該行為之過程、該行為對社會造成的影響等諸般情事予以考慮，並應基於健全的常識為慎重地判斷，不得抽象地予以概括」。審判，是以對等的私人間的社會關係上的紛爭的解決（民事審判）或擁有公權力的國家（或公共團體）與人民間公私益衝突的調整（刑事及行政審判）為目的的國家機能。確保一般國民對審判的信賴，對於運作審判制度的國家而言極為重要。因此，被委任行使審判權的法官，並非單有事實認定或法律判斷等高度的素養即足，在人格上，也應兼備足以凝聚一般國民的尊敬或信賴的品格。擁有如此品格的法官的裁判，才能贏得一般國民對審判的心悅誠服，不辱法官被期望的應有的品格這種倫理規範，本應存在於法官這樣的地位之內。而若有表現出違反這種內在規範的外部行為，就可認為是「法官的不當行為」。這種事理可共通於凡是身為國民全體公僕的所有公務員，例如日本國家公務員法第99條，規定：「公職人員不得為有傷害其官職的信用，或造成官職全體之不名譽之行為」，官吏服務紀律第3條，也規定：「〇1官吏不問職務之內外，應重廉恥，不得為貪污的行為，〇2官吏不問職務之內外，不得濫用權威，務應謹慎懇切」，皆是將內在於右述公務員地位之倫理規範表現於實體法上的規定。然

而法官在其職務的性質上，較一般公務員被要求更高的品格，故縱使就一般公務員而言還稱不上是「非行」的輕微事由，就法官而言卻有可能會被評價為「不當行為」，此點應予注意。實例上對訴訟關係人有惡質且執拗的粗暴、侮辱的言語，與當事人一同飲宴等，均可被評定為顯著的不當行為。

摘譯自日本學者上村千一郎著裁判官彈劾法精義一書

6 韓國司法人員倫理規範

六、韓國司法人員倫理規範

（一）韓國法官倫理規範

第　一　條　（保護司法獨立）

法官應捍衛司法獨立，不受任何外來影響。

第　二　條　（維護尊嚴）

法官應重視名譽並維護尊嚴

第　三　條　（公正與正直）

法官應公正並保持正直，不得從事使公正或正直被質疑之行為。

法官執行職務時，不得因血統、地域或教育背景、性別、宗教、社會經濟地位，表現偏見或歧視。

第　四　條　（執行司法職務）

法官應忠誠執行受分派之司法職務，並隨時注意保持和充實執行職務所需之法律專業能力。

法官應妥速並有效率地指揮程序，仔細並謹慎聽審以保障公平審判。

法官應對當事人、律師或其他法官執行職務相關之人溫和有禮。

法官除執行職務有必要外，應避免與當事人、法官執行職務相關之人聯繫或會面。

法官除為教育、學術研究和端正媒體報導

外，應避免對進行中之訴訟公開發表評論或意見。

第　五　條　　（法官職務外活動）

只要不與司法職責和維護尊嚴之義務相衝突，法官得參與職務外活動，如參與學術團體、宗教會員、或文化組織。

法官不得涉入他人之司法紛爭，不得為影響法官同仁案件之行為。

於程序會被影響或法官公正可能受質疑之情形，法官不得向司法相關人士，包括律師，提供法律意見或資訊。

第　六　條　　（財務活動之限制）

於法官公正可能受質疑、或司法職責會被擾亂之情形，法官不得參與財務交易，如金錢借貸；亦不得接受經濟利益，包括捐款在內。

第　七　條　　（政治中立）

法官執行職務時，應保持政治中立。

法官不得擔任政治活動組織之會員或委員。應避免損害法官政治中立的活動，包括政治選舉活動。

법관윤리강령

제1조(사법권 독립의 수호)

법관은 모든 외부의 영향으로부터 사법권의 독립을 지켜 나간다.

제2조(품위 유지) 법관은 명예를 존중하고 품위를 유지한다.

제3조(공정성 및 청렴성)

① 법관은 공평무사하고 청렴하여야 하며, 공정성과 청렴성을 의심받을 행동을 하지 아니한다.

② 법관은 혈연.지연.학연.성별.종교.경제적 능력 또는 사회적 지위 등을 이유로 편견을 가지거나 차별을 하지 아니한다.

제4조(직무의 성실한 수행)

① 법관은 맡은 바 직무를 성실하게 수행하며, 직무수행 능력을 향상시키기 위하여 꾸준히 노력한다.

② 법관은 신속하고 능률적으로 재판을 진행하며, 신중하고 충실하게 심리하여 재판의 적정성이 보장되도록 한다.

③ 법관은 당사자와 대리인 등 소송 관계인을 친절하고 정중하게 대한다.

④ 법관은 재판업무상 필요한 경우를 제외하고는 당사자와 대리인 등 소송 관게인을 법정 이외의 장소에서 면담하거나 접촉하지 아니한다.

⑤ 법관은 교육이나 학술 또는 정확한 보도를 위한 경우를 제외하고는 구체적 사건에 관하여 공개적으로 논평하거나 의견을 표명하지 아니한다.

제5조(법관의 직무 외 활동)

① 법관은 품위 유지와 직무 수행에 지장이 없는 경우에 한하여, 학술 활동에 참여하거나 종교.문화단체에 가입하는 등 직무 외 활동을 할 수 있다.

② 법관은 타인의 법적 분쟁에 관여하지 아니하며, 다른 법관의 재판에 영향을 미치는 행동을 하지 아니한다.

③ 법관은 재판에 영향을 미치거나 공정성을 의심받을 염려가 있는 경우에는 법률적 조언을 하거나 변호사 등 법조인에 대한 정보를 제공하지 아니한다.

제6조(경제적 행위의 제한)

법관은 재판의 공정성에 관한 의심을 초래하거나 직무수행에 지장을 줄 염려가 있는 경우에는, 금전대차 등 경제적 거래행위를 하지 아니하며 증여 기타 경제적 이익을 받지 아니한다.

제7조(정치적 중립)

① 법관은 직무를 수행함에 있어 정치적 중립을 지킨다.

② 법관은 정치활동을 목적으로 하는 단체의 임원이나 구성원이 되지 아니하며, 선거운동 등 정치적 중립성을 해치는 활동을 하지 아니한다.

（二）韓國檢察官倫理規範

第　一　條　　（期望）

檢察官應確立法治、保障人權，並為實現正義之公共利益代表人。

第　二　條　　（服務人民）

檢察官應忠誠並謙遜服務人民，謹記檢察職權來自人民授權。

第　三　條　　（政治中立與公正）

檢察官執行職務應保持政治中立，遠離政治選舉活動。

檢察官不得歧視犯罪嫌疑人、被害人、或其他案件關係人。並不得因任何壓力、誘惑和利益受影響；檢察官應依據法律，本於良心正直，公正地執行職務。

第　四　條　　（尊嚴與名譽）

檢察官應保有高尚尊嚴與道德，並重視公共生活和私人生活之名譽。

第　五　條　　（自我充實）

檢察官應隨時允實能力，以通達社會現象和培養社會要求之洞察力與智慧。

第　六　條　　（重視人權和正當法律程序）

檢察官應重視犯罪嫌疑人、被告和其他案件關係人之人權，並注意憲法和法律之程序。

第　七　條　　（適當執行檢察事務）

檢察官應依法律程序蒐集證據，適當適用

法律，不得濫用檢察職權。

第　八　條　　（妥速執行檢察事務）

檢察官應忠誠謹勉執行職務，妥速實現國家刑罰權。

第　九　條　　（自行迴避）

檢察官為犯罪嫌疑人、被害人或其他案件關係人（若涉及案件之人為法人的情形，指總裁，或控制股東）、民法第777條之親屬或律師、或就訴訟結果有個人利益，應自行迴避，不得參與程序。

檢察官有前項規定以外之特殊關係，可能影響公正性之情形，得自行迴避。

第　十　條　　（對案件關係人之態度）

檢察官調查時應遵守人權保障規則，仔細聆聽案件關係人，包括犯罪嫌疑人和被害人，並應盡力中立公正地對待關係人。

第十一條　（對律師之態度）

檢察官，於肯認並保障訴訟代理人的防禦權，不得無正當理由而私自與案件相關者之訴訟代理人或其員工溝通。

第十二條　　（對前輩之態度）

檢察官應尊重前輩、恪守禮節、態度有禮，並遵守前輩於職行職務有關之命令與監督：對於前輩命令與監督的合法性有異議之情形，檢察官得循適當程序提起異議。

第十三條　　（管理司法警察之態度）

檢察官，身為指揮調查程序之領導者，應掌控並監督司法警察。

第十四條　（檢察職務外之人際關係）

檢察官不得接觸可能對檢察官執行職務之公正有影響之人，檢察官應對自己行為謹慎為之。

第十五條　（與當事人聯繫之限制）

檢察官無正當理由不得與處理中案件之關係人，如犯罪嫌疑人、被害人，或其他關係人（下稱「關係人等」）私下聯繫。

第十六條　（禁止濫用職權）

檢察官應嚴分公務與私人事務，並不得濫用公務或職權圖利自己或他人。

檢察官不得利用於職務上所知之事實和資訊。

第十七條　（禁止參與財務活動）

檢察官不得參與商業活動謀取金錢利益；未得法務部長同意，不得從事其他有薪之職務。除非法律允許，檢察官亦不得兼任其他職務。

第十八條　（禁止關說與行賄）

檢察官不得對其他檢察官或機關所主管之案件為關說或行賄。

檢察官不得參與他人的法律紛爭謀取不正利益。

第十九條　（禁止收受金錢）

檢察官不得無理由接受第14條規定會擾亂職務之人，或第15條規定之關係人所給予之金錢、金錢利益、招待、或經濟利益。

第 二 十 條　（禁止介紹或推薦律師）

檢察官不得對自己主管案件，或其他同區辦公室之檢察官同仁主管案件之犯罪嫌疑人、被訴人、或其他關係人介紹或推薦律師。

第二十一條　（公開發表言論或投稿之規範）

檢察官欲以職稱投稿或公開發表關於其職務或調查之意見或內容，應取得所屬檢察署首長之許可。

第二十二條　（保守公務秘密）

檢察官就調查事項、相關人士個人資料、職務上得知之事實，應保守秘密。此外，檢察官使用電話、傳真、電子郵件或其他通訊裝置，應注意不使秘密外洩。

第二十三條　（指導與監督公務人員）

檢察官應尊重公務人員、學習司法官、其他與檢察官職務相關之公務員。檢察官應指導與監督公務人員不得從事不法或不正行為，並不得揭露或濫用公務秘密。

검사윤리강령

제1조(사명)

검사는 공익의 대표자로서 국법질서를 확립하고 국민의 인권을 보호하며 정의를 실현함을 그 사명으로 한다.

제2조(국민에 대한 봉사)

검사는 직무상의 권한이 국민으로부터 위임된 것임을 명심하여 성실하고 겸손한 자세로 국민에게 봉사한다.

제3조(정치적 중립과 공정)

① 검사는 정치운동에 관여하지 아니하며, 직무수행을 할 때 정치적 중립을 지킨다.

② 검사는 피의자나 피해자, 기타 사건 관계인에 대하여 정당한 이유 없이 차별 대우를 하지 아니하며 어떠한 압력이나 유혹, 정실에도 영향을 받지 아니하고 오로지 법과 양심에 따라 엄정하고 공평하게 직무를 수행한다.

제4조(청렴과 명예)

검사는 공.사생활에서 높은 도덕성과 청렴성을 유지하고, 명예롭고 품위 있게 행동한다.

제5조(자기계발)

검사는 변화하는 사회현상을 직시하고 높은 식견과 시대가 요구하는 새로운 지식을 쌓아 직무를 수행함에 부족함이 없도록 하기 위하여 끊임없이 자기계발에 노력한다.

제6조(인권보장과 적법절차의 준수)

검사는 피의자.피고인, 피해자 기타 사건 관계인의 인권을 보장하고, 헌법과 법령에 규정된 절차를 준수한다.

제7조(검찰권의 적정한 행사)

검사는 적법한 절차에 의하여 증거를 수집하고 법령의 정당한 적용을 통하여 공소권이 남용되지 않도록 한다.

제8조(검찰권의 신속한 행사)

검사는 직무를 성실하고 신속하게 수행함으로써 국가형벌권의 실현이 부당하게 지연되지 않도록 한다.

제9조(사건의 회피)

① 검사는 취급 중인 사건의 피의자, 피해자 기타 사건 관계인(당사자가 법인인 경우 대표이사 또는 지배주주)과 민법 제777조의 친족관계에 있거나 그들의 변호인으로 활동한 전력이 있을 때 또는 당해 사건과 자신의 이해가 관련되었을 때에는 그 사건을 회피한다.

② 검사는 취급 중인 사건의 사건 관계인과 제1항 이외의 친분 관계 기타 특별한 관계가 있는 경우에도 수사의 공정성을 의심받을 우려가 있다고 판단했을 때에는 그 사건을 회피할 수 있다.

제10조(사건 관계인에 대한 자세)

검사는 인권보호수사준칙을 준수하고, 피의자, 피해자 등 사건 관계인의 주장을 진지하게 경청하며 객관적이고 중립적인 입장에서 사건 관계인을 친절하게 대하도록 노력한다.

제11조(변호인에 대한 자세)

검사는 변호인의 변호권행사를 보장하되 취급 중인 사건의 변호인 또는 그 직원과 정당한 이유 없이 사적으로 접촉하지 아니한다.

제12조(상급자에 대한 자세)

검사는 상급자에게 예의를 갖추어 정중하게 대하며, 직무에 관한 상급자의 지휘.감독에 따라야 한다. 다만, 구체적 사건과 관련된 상급자의 지휘.감독의 적법성이나 정당성에 이견이 있을 때에는 절차에 따라서 이의를 제기할 수 있다.

제13조(사법경찰관리에 대한 자세)

검사는 수사의 주재자로서 엄정하고 합리적으로 사법경찰관리를 지휘하고 감독한다.

제14조(외부 인사와의 교류)

검사는 직무 수행의 공정성을 의심받을 우려가 있는 자와 교류하지 아니하며 그 처신에 유의한다.

제15조(사건 관계인 등과의 사적 접촉 제한)

검사는 자신이 취급하는 사건의 피의자, 피해자 등 사건 관계인 기타 직무와 이해관계가 있는 자(이하 '사건 관계인 등'이라 한다)와 정당한 이유 없이 사적으로 접촉하지 아니한다.

제16조(직무 등의 부당 이용 금지)

① 검사는 항상 공.사를 분명히 하고 자기 또는 타인의 부당한 이익을 위하여 그 직무나 직위를 이용하지 아니한다.

② 검사는 직무와 관련하여 알게 된 사실이나 취득한 자료를 부당한 목적으로 이용하지 아니한다.

제17조(영리행위 등 금지)

검사는 금전상의 이익을 목적으로 하는 업무에 종사하거나 법무부장관의 허가 없이 보수 있는 직무에 종사하는 일을 하지 못하며, 법령에 의하여 허용된 경우를 제외하고는 다른 직무를 겸하지 아니한다.

제18조(알선.청탁 등 금지)

① 검사는 다른 검사나 다른 기관에서 취급하는 사건 또는 사무에 관하여

공정한 직무를 저해할 수 있는 알선.청탁이나 부당한 영향력을 미치는 행동을 하지 아니한다.

② 검사는 부당한 이익을 목적으로 타인의 법적 분쟁에 관여하지 아니한다.

제19조(금품수수금지)

검사는 제14조에서 규정한 직무 수행의 공정성을 의심받을 우려가 있는 자나 제15조에서 규정한 사건관계인 등으로부터 정당한 이유 없이 금품, 금전상 이익, 향응이나 기타 경제적 편의를 제공받지 아니한다.

제20조(특정 변호사 선임 알선 금지)

검사는 직무상 관련이 있는 사건이나 자신이 근무하는 기관에서 취급 중인 사건에 관하여, 피의자, 피고인 기타 사건 관계인에게 특정 변호사의 선임을 알선하거나 권유하지 아니한다.

제21조(외부 기고 및 발표에 관한 원칙)

검사는 수사 등 직무와 관련된 사항에 관하여 검사의 직함을 사용하여 대외적으로 그 내용이나 의견을 기고.발표하는 등 공표할 때에는 소속 기관장의 승인을 받는다.

제22조(직무상 비밀유지)

검사는 수사사항, 사건 관계인의 개인 정보 기타 직무상 파악한 사실에 대하여 비밀을 유지하여야 하며, 전화, 팩스 또는 전자우편 그리고 기타

통신수단을 이용할 때에는 직무상 비밀이 누설되지 않도록 유의한다.

제23조(검사실 직원 등의 지도.감독)

검사는 그 사무실의 검찰공무원, 사법연수생, 기타 자신의 직무에 관여된 공무원을 인격적으로 존중하며, 그들이 직무에 관하여 위법 또는 부당한 행위를 하거나 업무상 지득한 비밀을 누설하거나 부당하게 이용하지 못하도록 지도.감독한다.

7 立陶宛共和國檢察官行為準則

七、立陶宛共和國檢察官行為準則

經立陶宛共和國檢察總長於西元2004年4月30日以I-68號政令核可

I. 總則

1. 立陶宛檢察官行為準則（下稱「本準則」）係為制訂檢察官於任職檢察機關時所應遵守之行為準則與專業倫理（活動）規範。
2. 為規範檢察官間於執行職務時與公餘之關係，以及檢察官與法律程序參與者、立陶宛公民與他人間之關係，特制訂本準則。
3. 任何人於決定成為一名檢察官時，均應獨立且有意識地立志為人民及司法服務，並認知其有遵守本準則所制訂之行為準則及倫理規範之義務。
4. 本準則係依據立陶宛共和國憲法所建立之制度而制訂，並依據檢察機關法、檢察實務指導準則、聯合國大會所批准之文件，以及由國際檢察官協會批准認可之「檢察官之專業責任與主要義務及權利設計」文件，且採用REC（2000）19歐盟理事會之部長委員會所起草「檢察機關在刑事司法系統中的角色」，亦採用REC 1604（2003）議會所議決「檢察機關在民主法治社會的角色」。

II. 檢察官之倫理規範與要求

5. 身為國家官員，檢察官必須聲譽卓著且公正執行司法，如同法院般的保衛個人、社會和政府的權利及合法利益，並應遵守以下規則及職業倫理，亦即：公平、廉正、中立、謹慎、獨立、守密、團隊精神、尊法、職責。

5.1. 公平原則

檢察官在此原則下應遵守下列義務：

5.1.1. 始終以明智及誠信的方式行事；為判斷及決定時須深思熟慮且合於法律規定；如有必要，應表明其所為判斷及決定之動機及論據；

5.1.2. 在依據證據及法律定罪之前，應遵守無罪推定原則；

5.1.3. 所為應無偏見，且應以法律為依歸，為判斷及決定時必須兼顧嫌疑人、被告及被害人之法律上權益。

5.2. 廉正原則

檢察官在此原則下應遵守下列義務：

5.2.1. 不得事先預作承諾；行為應正直、正派；以個人為模範，建立無懈可擊的檢察官聲譽；對於自己的錯誤能馬上承認並更正之；

5.2.2. 避免對同事流言蜚語及做出未經證實的評論；內部溝通應秉持禮貌與寬容之態度；

5.2.3. 不得縱容部屬；避免對部屬傲慢與輕蔑；周延評判執法官員所為違反法律及專業倫理規範之行為；機智得體地對反駁意見作出回應。

5.3. 中立原則

檢察官在此原則下應遵守下列義務：

5.3.1. 檢察官對待所有人民應一律平等，不得因國籍、出身背景、社會地位、性別、種族、語言、年紀、宗教、政治傾向、性傾向或其他立場態度而有差別待遇；

5.3.2. 檢察官應以拘謹及客觀的方式對待訴訟程序中的參與者，應避免親暱或憎惡之態度；

5.3.3. 當執行職務或所為決定牽涉檢察官本身、家族成員或其他相關者之利益時，檢察官即應迴避。

5.4. 謹慎原則

檢察官在此原則下應遵守下列義務：

5.4.1. 不得濫用其法定職務或為獲取不當利益而以私人行為或活動發表意見；

5.4.2. 不得利用其法定職務影響其他人做出可能導致私益或公益衝突之決定；

5.4.3. 不得出於公務或非公務之目的，違法使用國家及其機構、機關、人民或法人之財產。

5.5. 獨立原則

檢察官在此原則下應遵守下列義務：

5.5.1. 落實憲法與檢察官職務規定，主要藉由獨立性及豁免身分，在立陶宛共和國獨立執行職務；

5.5.2. 重視政治中立的地位，不得屬於任何政治組織，亦不得與任何政治組織或其成員有職務活動，並不得公開表達政治觀點；

5.5.3. 應違抗來自從政者、政府官員、執法官員所為形式及內容牴觸法律、本準則之規範及其他法律規定之命令或要求。

5.6. 守密原則

檢察官在此原則下應遵守下列義務：

5.6.1. 不得對檢察機關所保管持有之應保密或不公開之資料發表意見；在其他檢察官對其職務上持有的資訊表達意見前，應自我約束不予公開或散布該等資訊；

5.6.2. 不得對公眾或有利害關係之人發布任何進行中、偵查中或已起訴案件之資訊，蓋此等舉措無任何法律或道德之基礎；

5.6.3. 不得提供任何其執行法定職務期間所獲得之資料，即使上開資料涉及他人不法利益的賠償。

5.7. 團隊精神原則

檢察官在此原則下應遵守下列義務：

5.7.1. 應與同事交換執行職務所應知之訊息；應發展專業技能和知識，並與經驗不足之檢察官分享之。

5.7.2. 應避免對其他檢察官之工作做出未經證實且公開之評論；應保護同僚免於遭受詆毀、不當之批評或職業歧視；

5.7.3. 不得容忍檢察官同僚違反檢察機關法及本準則之規定；應及時提醒即將違法之同事；如有必要，應將之通知資深檢察官。

5.8. 尊法原則

檢察官在此原則下應遵守下列義務：

5.8.1. 在民間及專業上對國際法及內國法均應同等尊重；應認知並促進法律優先適用原則；

5.8.2. 應參與造法過程、犯罪預防活動，以及法治國家原則的建立，藉此保障人權，使人民受法律保障之自由與尊嚴免於受到侵害；

5.8.3. 撰寫司法程序文件、其他文章以及發表公開演講時，應依循專業倫理規範、法律行為規範以及國家官方語言之要求。

5.9. 職責原則

檢察官在此原則下應遵守下列義務：

5.9.1. 在執行公務及公餘時間，應避免言語或個人舉止有藐視或侮辱檢察官職稱及檢察官署之虞；

5.9.2. 不得接受以檢察官職務或以違反法律要求為對價之招待、縱放、餽贈或其他利益；

5.9.3. 永不得利用或操縱法律所賦予之行動自主性或同僚之信任；永不得逃避犯錯或違法決定之責任。

III. 與檢察官倫理相互衝突之行為

6. 為促進實現正義及懲罰措施之效率，檢察官應忠實執行法律之程序、檢察總長之命令以及本準則之規範；檢察官應與國際執法機構以及審前專家共同合作，以協助確保正義實現與刑罰確實執行。
7. 檢察官：
   7.1. 身為主導或發動調查犯罪行為之人，永不得容任在證據蒐集以及提出過程之中，無視於行為準則及專業倫理規範，亦不得允許在缺乏相當法律基礎的情況下公布對犯罪嫌疑之指控；
   7.2. 應避免放肆的言行或類似情況，而對於檢察官及其屬員所為審前調查及司法程序判斷之公正性造成負面之影響；
   7.3. 為保護合法權益，應熟諳案件的各種情況條件及所應適用法律；為代表國家以及人民，應積極參與刑事案件及其他違法行為之調查及訴訟程序。
   7.4. 應盡可能支持法院的權威及訴訟程序的尊嚴；應避免可能冒犯法院及訴訟程序參與者之言論或暗示。
   7.5. 不得顯露與檢察機關或法院承審人員之私人情誼；對於上級檢察官之實體決定或法院尚未執行之決定，不得忽視，亦不得正式評論；若不同意上開決定，應依據已制定之規範提起上訴；
8. 應本於耐心、客觀及機智調查請求及請願；應考量情勢、教育、年紀、物質上或精神上等因素，以受決定人可理解之方法解釋說明其決定。

9. 檢察官應避免任何可能損及其本人或檢察機關聲譽的交往關係。若近親或家庭成員恰為所承辦案件之參與者，即有公共利益與私人利益衝突之虞，檢察官應將上開情事呈報其上級檢察官。
10. 違反檢察官宣示條款之行為，縱因其公務職權之屬性而不構成行政或刑事責任，該等行為仍應視為侮辱檢察官名聲和違反本準則之適例。
11. 於辦公期間故意為不實陳述或類此之欺騙行為、使用無禮的文字或舉止、衣著凌亂或起訴不當，皆為違反本準則規定及立法精神之行為。
12. 於辦公期間沉迷於酒精、藥物、致精神異常或有毒物質者，偽造病假單或基於其他目的所製作之失業文件者，以及擅自將工作時間、設備或公務財產用於其他目的者，縱因其公務職權之屬性而不構成行政或刑事責任，仍應視為違反本準則之行為。
13. 若無使用槍枝的意圖，僅意圖恐嚇家庭成員或其他社會大眾而在公眾面前展示槍械，縱不構成刑事犯罪，仍應視為違反本準則規定及立法精神之行為。
14. 疏於依法申報財產或金錢來源，縱不構成行政或刑事責任，仍應視為違反本準則規定及立法精神之行為。

IV. 罰則

15. 檢察官之行為、行動或決定（其作為與實踐）違反本準則之規定及立法精神，並減損檢察機關或檢察官自身之名譽者，為法所不許，且應依本準則第16條規定究責。

16. 違反本準則之情事須經檢察官倫理委員會（下稱委員會）依所受賦予之權限予以審查之。
17. 若察覺檢察官執行職務時無視倫理規範及違反本準則之規定，委員會有施以下列處置之權限：查證確認違反法規之行為、制止違反倫理道德之行為、履行抗辯、執行警告、公示宣告決定（資訊）以及提出補償道德損害之建議。
18. 若察覺檢察官之行為不僅違反本準則之規定及立法精神，亦屬違反法律、瀆職行為或侮辱檢察官之名聲者，委員會應將上開事證呈報檢察總長，據以對該行為展開官方調查及評鑑；上開調查及評鑑應依照檢察機關法第38條之規定辦理。
19. 違反本準則之規定及立法精神之罰則，必須受檢察機關法、本準則、檢察官倫理委員會處理人民請求及請願程序法、審計法及公務人員懲戒法之規範限制。

V. 附則

20. 檢察官應以根據事實、就事論事、中庸節制之表達方式為公眾演講、撰寫文章及接觸媒體；亦應在全盤考量後表達意見，且認知其意見可能被解讀為代表整體檢察機關之意見。
21. 檢察官遴選評鑑及倫理委員會應致力於使全體檢察官及檢察官候選人充分知悉由本準則、檢察機關法、國際法等所規定之道德及倫理規範。

22. 若有根據可資認定檢察官所為違反倫理規範之行為或決定，可歸因於其健康狀況，委員會須向檢察總長提出「命令該檢察官進行健康檢查」之決議。
22. 若有必要，檢察官有權利自行向委員會申請並取得關於「其行為是否符合本準則之規定與原則」之評鑑決定。
23. 檢察官有權利對於倫理委員會之決定向立陶宛共和國檢察總長提起上訴。

Translation from Lithuanian

APPROVED by the Order No I-68
of April month 30 day, 2004
by the Prosecutor General of the Republic of
Lithuania

THE CODE OF CONDUCT
OF THE PROSECUTORS OF LITHUANIA

I. GENERAL PROVISIONS

1. The Code of Conduct of the Prosecutors of Lithuania (hereafter the Code) shall set the rules of conduct and the principles of professional ethics (activities) to be
followed by the Prosecutors when holding office in the Prosecutor's Office.
2. The Code is aimed at the regulation of relations among the Prosecutors during the office hours and after them as well as the regulation of relations with the
participants of the legal process, the citizens of Lithuania, and other people.
3. Having decided to work as a Prosecutor, the person shall resolve - independently and consciously - to serve people and justice and shall acknowledge the
Rules of Conduct as well as the obligatory Principles of Ethics.
4. The present Code was prepared under the Regulations provided by the Constitution of the Republic of Lithuania, the Law On The Prosecutor's Office,
'Guidelines of The Prosecutorial Practice', a document approved by the Congress of the
United Nations, and `Standards of Professional Responsibility and The Layout of Major
Obligations and Rights of The Prosecutors', a document approved by the International

Association of Prosecutors, also further to the recommendation REC (2000)19 “Role of
Prosecution Service in the System of Criminal Justice” prepared by the Minister
Committee of the European Council, and recommendations REC 1604(2003) “Role of
Prosecution Service in the Democratic Society of the Rule of Law” of the Parliamentary
Assembly.

II. ETHICAL PRINCIPLES AND REQUIREMENTS DUE TO PROSECUTORS

5. As a state official, the Prosecutor shall hold an impeccable reputation and, contributing to the execution of justice, originally performed by the court, defending the
rights and lawful interests of a person, society and the government, shall comply with
the following Rules and Principles of Professional Ethics:
Justice,
Integrity,
Impartiality,
Discretion,
Independence,
Confidentiality,
Solidarity,
Respect for the Law,
Responsibility.

5.1. The Principle of JUSTICE.

Under this Principle, the Prosecutor shall be obliged to:

5.1.1. always act in a wise and truthful way; pass well-considered and lawful decisions; if necessary, declare the motives and arguments of the decisions to be passed;

5.1.2. follow that the person who is suspected of a misdemeanour or a criminal act is considered not guilty as long as he or she is found guilty under the law;

5.1.3. without prejudice and following exclusively the rules of legal acts, pass decisions that influence the rights and lawful interests of suspects, the accused, and the aggrieved.

5. 2. The Principle of INTEGRITY.

Under this Principle, the Prosecutor shall be obliged to:

5.2.1. give no promise of any decisions in advance; behave in an honest and decent way; by personal example, create an impeccable reputation of the Prosecutor;
immediately acknowledge and correct the mistakes made;

5.2.2. avoid gossip and unsubstantiated criticism by colleagues; provide the inter-communication with politeness and tolerance;

5.2.3. allow no indulgences for subordinates; avoid arrogance and disrespect towards them; attentively evaluate the breaches of the law and professional ethics

committed by the law-enforcement officials; tactfully react to contradictions.

5. 3. The Principle of IMPARTIALITY.

Under this Principle, the Prosecutor shall be obliged to:

5.3.1. treat all people equally regardless their nationality, social roots and status, sex, racial and ethnical origin, language, age, religion, political views, sexual or
other attitudes;

5.3.2. treat the participants of the process in a reserved and objective way; avoid familiarity and animosity;

5.3.3. stand down when it concerns the execution of the duty or the decisionmaking
due to the interests of himself or herself, members of the family, or other related
people.

5.4. The Principle of DISCRETION.

Under this Principle, the Prosecutor shall be obliged to:

5.4.1. by personal conduct and activities allow no occurance of the opinion that he or she abuses their official position or has corrupt interests;

5.4.2. use not his or her official position to influence the decisions of other people when those decisions can cause the conflict of private and public interests;

5.4.3. use not, by breaching the statutory rules, the property of the state, its institutions and establishments, its residents or legal entities for the official and nonofficial
purposes;

5. 5. The Principle of INDEPENDENCE.

Under this Principle, the Prosecutor shall be obliged to:

5.5.1. implement the Provision under the Constitution and the Law On The Prosecutor's Office, mainly to be independent and, by holding the status of immunity, to act independently on the entire territory of the Republic of Lithuania;

5.5.2. regard the principal of political neutrality - belong to no political organisation and relate no office activities to it or to its members, express no personal political views in public;

5.5.3. disobey orders and requests by state politicians, state officials and lawenforcement officials if their form and content contradict the laws, norms of this Code, other acts of law.

5. 6. The Principle of CONFIDENTIALITY.

Under this Principle, the Prosecutor shall be obliged to:

5.6.1. make no comments on the confidential information or off-the-record data held by the Prosecutor's Office; restrain himself or herself from announcing or distributing information held by other Prosecutors without their prior advice on that;

5.6.2. having no legal or moral basis, announce to the public or interested people no data of the proceedings, the pre-trial investigation or the prosecutorial examination;

5.6.3. provide no data received during the execution of official duties if this concerns the satisfaction of illegal interests of other people.

5. 7. The Principle of SOLIDARITY.

Under this Principle, the Prosecutor shall be obliged to:

5.7.1. exchange information with the colleagues that should be known to them for proper execution of their duties; develop professional skills and knowledge and
share them with the Prosecutors who have less professional experience;

5.7.2. restrain himself or herself from unsubstantiated and public comments on the work of other Prosecutors; protect the colleagues from slander, inadequate
criticism or professional discrimination;

5.7.3. tolerate no breaches of the Law On The Prosecutor's Office or The Code of Conduct committed by the Prosecutors; warn the colleague who is to commit a
breach on time; if necessary, advise a senior Prosecutor on that.

5. 8. The Principle of RESPECT FOR THE LAW.

Under this Principle, the Prosecutor shall be obliged to:

5.8.1. show equal civil and professional respect for international and national
statutory rules; acknowledge and promote the precedence of the application of the law;

5.8.2. participate in the lawmaking process, activities of crime prevention and
the establishment of the principles of the law-abiding country, thus guaranteeing the
protection of human rights, the immunity of their liberties and dignity under the law;

5.8.3. while filling in the documents of the process and other papers as well as producing public speeches, follow the Ethical Principles, standard legal acts and the
Requirements under the Law of The State Language.

THE CODE OF CONDUCT OF THE PROSECUTORS OF LITHUANIA
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5. 9. The Principle of RESPONSIBILITY.

Under this Principle, the Prosecutor shall be obliged to:
5.9.1. during the office hours and after them, by words or personal conduct, avoid scorning or humiliating the name of the Prosecutor as a state official and that of
the Prosecutor's Office as a state institution;
5.9.2. accept no services, indulgencies, presents or other amiabilities if this is
done to take advantage of the position of the Prosecutor or by breaching the requirements under the Code and other legal acts;
5.9.3. take no advantage and never manipulate either the freedom of action provided by the law or the trust of the colleagues; never avoid responsibility for the work
done in a wrong way or the decision adopted illegally.
III. DEEDS INCOMPATIBLE WITH PROSECUTORIAL ETHICS
6. Aiming at efficiency of justice and punitive measures, the Prosecutor shall honestly execute the laws of the process, the Orders by the Prosecutor General, the
Regulations of this Code; he shall collaborate with international law-enforcement

institutions and pre-trial specialists, shall help to ensure justice and execution of the
inevitability of the punishment.
7. The Prosecutor:
7.1. being the Head of the investigation into the criminal act or the initiator of
it, shall never tolerate cases of ignorance of the Rules of Conduct and Principles of
Professional Ethics during the collection and presentation of evidence, nor shall allow
the declaration of suspicions without a considerable legal basis;
7.2. shall avoid familiarity and such situations which could influence - in a negative way - the impartiality of both him or her and the Prosecutors under his or her
rule as well as the officials of the pre-trial investigation; also the justice of their
procedural decisions;
7.3. by protecting the lawful interests, shall always be well-acquainted with conditions and the laws of the case; by representing the country and the citizens, shall
actively participate in the investigation and the proceedings of the criminal acts and
other breaches of law;
7.4. in every possible way shall support the authority of the courts and the dignity of and the process of the courts; shall avoid phrases and hints that could offend
the Court or the participants of the process;
7.5. shall demonstrate no personal relations with the staff of the Prosecutor's Office nor the Court; shall not ignore nor officially comment on the substantiated

decisions of the superior Prosecutor or the uninforced decisions of the Court; when
disagreeing with them, shall appeal according to the established order;
8. While examining Claims and Petitions, shall be patient, objective, and tactful; shall explain all his or her decisions to the bearer in an understandable way,
considering the situation, education and age of the person, other physical and psychical
features.
9. Prosecutor shall avoid relations that could make harm to the reputation of him or her or that of the Prosecutor's Office. If a close relative or a member of the family
happens to be a participant of the process, which could cause the conflict of public and
private interests, the Prosecutor shall advise a senior Prosecutor on that.

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10. Actions that breach the Provisions of the Prosecutor's Oath, if they do not
provide for administrative and criminal responsibility as well as that due to official duties,
shall be considered as an example of conduct that humiliates the name of the
Prosecutor and the breach of the Rules and Principles of the present Code.
11. Intentional failure to tell the truth or other kind of fraudulence, use of offensive words or gestures, wearing of untidy garments or inappropriately set

prosecutorial attributes during the office hours shall be considered as the breach of the
Rules and Principles of the present Code.
12. Being intoxicated with alcohol, drugs, psychotropic or toxic materials during the office hours, false sick-list or other unemployment motivating paper,
exploitation of working hours, work measures, and the inventory for other than the set
purposes, if this does not provide for administrative and criminal responsibility as well as
that due to official duties, shall be considered as the breach of the Rules of the present
Code.
13. Demonstration of the service gun in public, its use according to the purpose without purpose, terrifying of the family members and other persons by it, if this
is not a criminal act, shall be considered as the breach of the Rules and Principles of
the present Code.
14. Any case of ignoring to declare property or pecuniary funds, when provided with a legal request, if this does not provide for administrative or criminal
liability, shall be considered as the breach of the Rules and Principles of the present
Code.

IV. SANCTIONS

15. The deeds, actions, and decisions of the Prosecutor (his conduct and practices) that breach the Rules and Principles of ethics the present Code and that

discredit the name of the Prosecutor's Office or the Prosecutor himself or herself, shall
not be allowed and shall result in liability pursuant to the article 16 of this Code.
16. The breaches of the Code shall be examined by The Commission of Prosecutorial Ethics (hereafter the Commission) according to the competence provided.
17. Having detected that the Prosecutor ignores the Principles of Ethics and breaches the Rules of the Code, while executing his or her official duties, the
Commission shall have the authority to apply the following sanctions:
the acknowledgement of the breach,
the obligation to terminate the non-ethical conduct,
the obligation to perform an excuse,
the warning,
a public declaration of the decision (information),
the proposal to reimburse the moral injury.
18. Having detected in the activities of the Prosecutor not only the breaches of the Rules and Principles of the Code, but also the evidence of the breaches of law,
malfeasances, or cases of conduct that humiliate the name of the Prosecutor, the
Commission shall transfer the material to the Prosecutor General for the execution of
the official examination and the evaluation of the Prosecutor's activities; this shall be
done under the Law On The Prosecutor's Office, Article 38.
19. Sanctions applied for the breaches of the Rules and Principles of ethics of the present Code shall be regulated by the Law On The Prosecutor's Office, this

Code, the Procedures of Activity of The Commission of Ethics and Examination of the
Requests and Complaints of Persons, provisions of Implementation of Official Audit and
Application of Service Punishments.

V. CONCLUDING PROVISIONS

20. While producing public speeches, writing articles, contacting the media, the Prosecutor shall preserve his or her matter-of-fact and moderate way of expression;
shall express well-considered ideas, realising that they can be perceived as the opinion
of the entire Prosecutor's Office.
21. The Commissions of Selection, Assessment, and Ethics shall undertake measures to ensure that the principles of morality and ethics provided by the present
Code, the Law On The Prosecutor's Office, and the international legal acts were known
to all Prosecutors as well as the candidates to the post of the Prosecutor.
22. In case of the presence of grounds to assume that the Prosecutor has breached the Principles of Ethics by his or her deeds, actions, or decisions; and this
was done due to his or her state of health, the Commission shall provide the Prosecutor
General with the Conclusion Due to Proposal to Order The Prosecutor to Examine His

or Her Health.

22. If needed, the Prosecutor shall have the right to approach the Commission by himself or herself, providing it with an Application and receiving the

Evaluation Conclusion On Whether His Or Her Activities Comply With The Requirements Of The Rules and Principles of The Code.

23. The Prosecutor shall have the right to appeal the decisions of the Commission of Ethics to the Prosecutor General of the Republic of Lithuania.

國家圖書館出版品預行編目(CPI)資料

司法倫理 (外國篇)
法務部司法官學院編印. -- 四版. -- 臺北市：
法務部司法官學院, 民 105.03
475 頁 ; 14.8 × 21 公分
ISBN 978-986-04-8123-5 (平裝)

1.司法人員　2.專業倫理

198.589　105003100

司法倫理(外國篇)

編　輯　者：法務部司法官學院
出 版 機 關：法務部司法官學院
地　　址：106 臺北市大安區辛亥路 3 段 81 號
電　　話：(02) 2733-1047
網　　址：http://www.tpi.moj.gov.tw
出 版 日 期：中華民國 105 年 3 月
版　　次：四版
承 印 者：承亞興圖文印刷有限公司
電　　話：(02) 2799-5911
內容同時登載於法務部司法官學院網站
網址為 http://www.tpi.moj.gov.tw